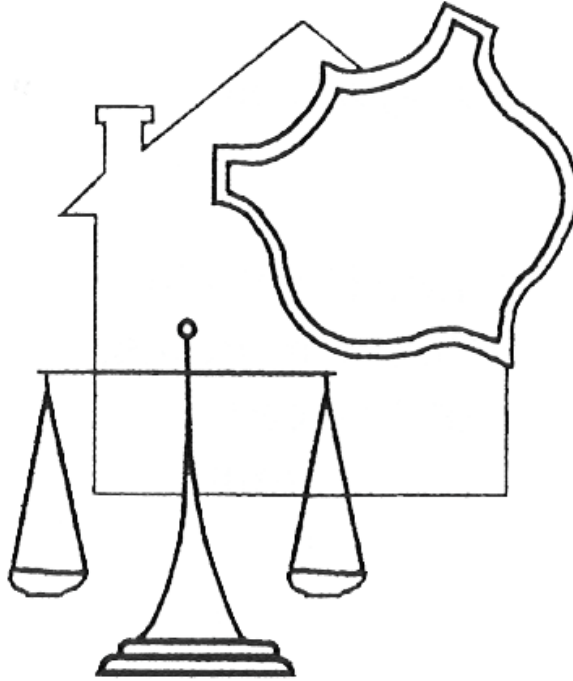


THE MICHIGAN LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE



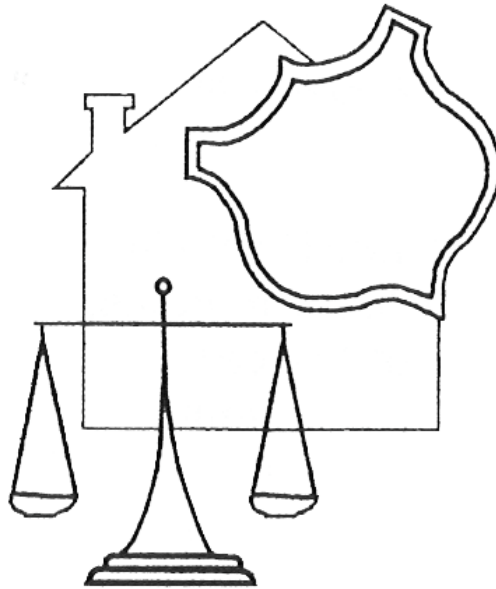
OFFICER MANUAL

Third Edition

**Janet E. Findlater
Cherylee Finney
Hermina Kramp**

January 2004

THE MICHIGAN LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE



OFFICER MANUAL

Third Edition

Produced by State of Michigan

Michigan Commission on Law Enforcement Standards

**Lansing, Michigan
2004**

**Authors: Janet E. Findlater
Cherylee Finney
Hermina Kramp**

The Michigan Domestic Violence Law Enforcement Training Project

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DOMESTIC VIOLENCE
PREVENTION &
TREATMENT BOARD**

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THE MICHIGAN LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE OFFICER MANUAL

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TABLE OF CONTENTS

1. NATURE AND PREVALENCE OF DOMESTIC VIOLENCE

Introduction to Chapter 1.....	1
A. The Historical Context and Changes in Society's Understanding of Domestic Violence.....	3
B. The Nature of Domestic Violence.....	9
C. Criminal and Abusive Behaviors Used by Domestic Violence Assailants.....	13
D. On Scene Assailant Behavior.....	21
E. On Scene Victim Behaviors.....	27
F. Consequences Victims Face When Leaving.....	37
G. Consequences Victims May Face When Participating in Prosecution.....	43
H. Indicators That Can Assist Officers in Assessing When an Assailant Might Kill.....	47

2. LAW REGARDING DOMESTIC VIOLENCE

Introduction to Chapter 2.....	53
A. Domestic Violence is a Law Enforcement Issue.....	55
B. Substantive Criminal Law as it Relates to Domestic Violence.....	61
C. Options Available to the Court in Sentencing and Adjudication in Domestic Violence Cases.....	83
D. Stalking in Domestic Violence Cases.....	85

E. Aggravated Stalking in Domestic Violence Cases.....	89
F. The Authority of a Police Officer in Enforcing Domestic Violence Laws.....	93
G. Domestic Relationship Personal Protection Order.....	99
H. Stalking (Non-Domestic) Personal Protection Order.....	105
I. Court Procedures Related to Personal Protection Orders.....	109
J. Enforcement of Michigan Personal Protection Orders.....	115
K. Enforcement of “Foreign” Protection Orders in Michigan.....	125
L. Personal Protection Orders and the Purchase or Possession of a Firearm.....	131
M. The Arrest Decision in Domestic Violence Cases.....	140
N. Procedural Requirements When Responding to Domestic Violence.....	149
 3. RESPONSE PROCEDURES	
Introduction to Chapter 3.....	159
A. Respond to the Scene of Domestic Violence.....	161
B. Initial Contact at the Scene.....	167
C. Enter the Domestic Violence Scene Effectively and Safely.....	171
D. Conduct a Preliminary Criminal Investigation Upon Entry to the Scene.....	175
E. Interview the Suspected Assailant as Part of the Complete Criminal Investigation at a Domestic Violence Scene.....	181

F. Interview the Victim as Part of the Complete Criminal Investigation at a Domestic Violence Scene.....	185
G. Determine Whether Probable Cause Exists to Make an Arrest When Responding to Domestic Violence.....	191
H. Arrest a Domestic Violence Assailant After Establishing Probable Cause That a Crime has Been Committed.....	197
I. Arrest the Respondent After Establishing That a Michigan Personal Protection Order (PPO) has Been Violated.....	199
J. Arrest the Respondent After Establishing That a Foreign Protection Order (FPO) has Been Violated.....	203
K. Arrest a Defendant After Establishing That a Michigan Protective Conditional Release Order (Conditional Bond) has Been Violated.....	207
L. Collect Evidence and Complete the Criminal Investigation at the Domestic Violence Scene.....	213
M. Provide Appropriate Assistance to the Domestic Violence Victim When an Arrest has Been Made.....	219
N. Secure a Domestic Violence Scene When an Arrest Cannot be Made.....	223
O. Write a Domestic Violence Report Documenting the Domestic Violence Investigation.....	227

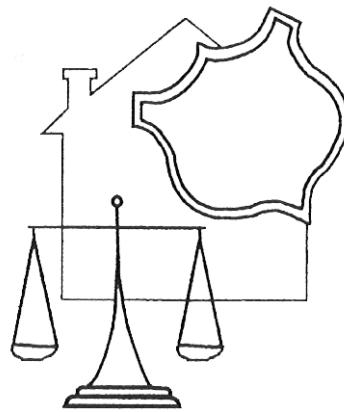
APPENDIXES

Table of Appendixes.....	231
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1. Nature and Prevalence of Domestic Violence

INTRODUCTION

Chapter 1 discusses the prevalence of domestic violence and the context in which it occurs. An understanding of these factors is crucial if officers are to be effective in their response to domestic violence.



A. THE HISTORICAL CONTEXT AND CHANGES IN SOCIETY'S UNDERSTANDING OF DOMESTIC VIOLENCE

1. Changes surrounding the way society understands and responds to domestic violence.

Historically, domestic violence was frequently ignored and sometimes accepted by the legal system and the community. More recently, social workers, family therapists, law enforcement officials, the courts and society viewed domestic violence as a family matter; although mediation and counseling might be proposed, the problem was seen as primarily private and the goal was to maintain the family unit. These remedies were ineffective at stopping the violence. Because of new information—research, victim's stories, reports from advocates, social workers, and law enforcement officers—this approach is being replaced throughout the country with criminal investigation and arrest as part of a coordinated community response.

NOTE ON STATISTICS: Because of ongoing investigations into domestic violence, results of studies will vary somewhat and statistics may change over time.

NOTES ON ASSAILANTS AND VICTIMS

- The predominant social reality regarding domestic and dating violence is that men/boys are assailants and women/girls are victims. Domestic and dating violence can also occur in gay male or lesbian relationships and is occasionally perpetrated by women/girls in heterosexual relationships.
- The U.S. Department of Justice reported that the victim was female in about 85 percent of the violence by intimates recorded in the 1992-96 National Crime Victim Survey (Bureau of Justice Statistics, 1998).
- (The U.S. Department of Justice defines intimates as spouses, ex-spouses, boyfriends, ex-boyfriends, girlfriends and ex-girlfriends [Bureau of Justice Statistics, 1998].)

- Young women between the ages of 16-24 are the most vulnerable to intimate partner violence (“Intimate Partner Violence”, Bureau of Justice Statistics Special Report, May 2000, NCJ 178247).
- Approximately one in five female high school students reports being physically and/or sexually abused by a dating partner (“Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality”, Jurnal of American Medicine, Vol. 286, No. 5, August 1, 2001.)
- The U.S. Department of Justice reported that between 1992-96, women were five to eight times more likely than men to be victimized by a spouse, ex-spouse, or individual with whom there was a current or previous sexual or romantic involvement (Bureau of Justice Statistics, 1998).
- Women were significantly more likely than men to report being victimized by an intimate partner...they were 7 to 14 times more likely to report that an intimate partner bet them up, choked or tried to drown them, or threatened them with a gun or knife. (Bureau of Justice Statistics, 2000).

MEDIATION: The response now being taught differs from the mediation approach to domestic violence that was employed by society, law enforcement and social work in the past. The historical information is provided to show why criminal investigation and arrest has supplanted mediation.

2. Domestic violence affects the entire community.

The cost of domestic violence to society is too high to be ignored.

NOTE: Details of what to look for in determining the likelihood of a situation escalating to the point of homicide will be discussed in the last section of this chapter.

- a. Family, friends, children and even neighbors of the victim are often hurt or killed by the assailant.
- b. Children may suffer a range of physical, psychological and emotional trauma from living with a batterer's behavior.
- c. Medical costs, work loss and public safety costs are significant.

NOTES ON THE COSTS OF DOMESTIC VIOLENCE

Based on the reports of female victims of *nonlethal* intimate violence, the medical expenses from physical trauma, broken or stolen property, and lost pay cost the victims nearly \$150 million a year. However, the Department of Justice acknowledges that this figure may be substantially under-estimated.

Thirty-seven percent of women who sought emergency department treatment for violence-related injuries in 1994 were there for domestic violence related injuries (Bureau of Justice Statistics, 1997). Eighty-four percent of persons treated for injuries inflicted by intimates were women.

Approximately one third (31 percent) of the women injured during their most recent intimate partner rape received some type of medical care...(Bureau of Justice Statistics, 2000).

- d. Without intervention, children learn that violence is an acceptable way to solve problems and violence remains a continuing community safety problem.

3. The role of a domestic violence service program in a coordinated community response.

Coordinated community response is a strategy for intervening in domestic violence by holding assailants accountable for their violence and providing information, support and assistance to victims.

NOTE: A coordinated community response is necessary in order to effectively counter domestic violence in a community. Officers should be aware of what domestic violence service programs are doing as a part of this coordinated response.

This type of response is intended to prevent community collusion with the assailant. Rather than accepting the assailant's rationalization—or "excuses" for battering—all community agencies that respond to domestic violence agree to focus on stopping the criminal behavior and protecting the victim. Assailants are arrested and prosecuted. If found guilty they receive jail terms and/or court-mandated treatment. Probation and parole departments follow up by monitoring the behavior of adjudicated assailants.

EXAMPLES OF A COORDINATED COMMUNITY RESPONSE:

- a written agreement between the police department and a local domestic violence service program that the shelter will be notified when an arrest is made and that shelter staff will contact the victim and provide information concerning the incarceration status of the assailant when an arrest is made;
- a community task force on domestic violence;
- no drop policies on the part of the prosecutor;
- advocates from the local service program who are available to accompany victims to court.

(The examples on the previous page are consistent with coordinated community responses recommended by the Attorney General's Task Force on Family Violence.)

Victims are given information, protection and support which can often facilitate their participation in the prosecution. Such a response requires the cooperation of various agencies—domestic violence service programs, police, prosecutors, courts, legal services, medical personnel, etc.—to develop protocols, procedures and cooperative working relationships and provide education and training.

In a coordinated community response, domestic violence services:

- a. provide shelter to victims;
- b. provide support and legal advocacy for victims;
- c. provide services to children; and some programs provide counseling services to assailants.

Additional Resources:

Peter G. Jaffe, David Wolfe, and Susan Kaye Wilson, *Children of Battered Women* (Newbury Park, California: Sage Publications, 1990).

Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986).

B. THE NATURE OF DOMESTIC VIOLENCE

- 1. Domestic violence is not limited to any race, age, sexual orientation, socioeconomic class, educational level or occupation.**

Neither the victims nor perpetrators of domestic violence are limited to any race, age, sexual orientation, socioeconomic class, educational level, or occupation. Some victims are less visible than others. They may have more available resources which allow them to make private arrangements rather than seek police protection in the early stages of violence. For example, a victim who has the ability to flee to a motel and seek a divorce through a private attorney may not show up in the statistics as readily as one who must rely on public shelters and publicly provided legal assistance. It is important to note that even a victim from a higher economic level may have little or no access to money since economic abuse is a common assailant tactic, and any victim might become financially destitute when leaving a spouse or partner.

<p>NOTE: The U.S. Department of Justice found that: “Violence against women perpetrated by intimates [is] consistent across racial and ethnic boundaries. No statistically significant differences [exist] between these groups. Black and white women and Hispanic women [sustain] about the same amount of violence by intimates.” (Bureau of Justice Statistics, 1995)</p>
--

- 2. Domestic violence is a pattern of learned behavior which occurs over time and can be controlled by the assailant.**
 - a. Domestic violence is used by assailants to get victims to do what the assailants want.** Domestic violence is learned behavior—assailants use violence because they have learned that it gets them what they want. Frequently it is difficult for others to understand the motivation for violence, especially when it seems illogical or out of proportion to the excuse given. Without effective intervention assailants learn that the use of physical assault and/or threats of harm are no big deal, and since it is effective in getting them what they want they continue their violence.

CASE EXAMPLES

It was like having a new toy. . . . I had the buttons and I could make her do whatever I wanted. I was trying to intimidate her. I wanted control for the simple reason that I knew I could do it. It made me feel powerful. (“Donald,” perpetrator of domestic violence, interviewed by Ibelle)

When I found it necessary to use physical violence to correct a situation or to get my partner back in line and regain my control, the amount of physical abuse I used was directly related to how my partner was going to respond. If I could shove her and that was going to get her attention, and I could get what I want[ed], then that’s all I had to do. Then if that wasn’t working, then I’d grab her and throw her down or I would actually hit her. Whatever it took to get her to submit to the situation. . . . (*Abuser 1, Personal Interviews, Kramp*)

- b. **Domestic violence is a pattern of behavior that includes a variety of abusive and criminal behaviors.** These behaviors may include everything from threats and psychological abuse to sexual assault and/or homicide.

NOTE: Specifics about assailant behavior in domestic violence are covered in the next section.

DOMESTIC VIOLENCE is a pattern of behavior, not an isolated incident: According to the Bureau of Justice Statistics, “nearly a third of female victims of nonlethal intimate violence were victimized at least twice during the previous 6 months.”

- c. **Domestic violence can include the threat of violence as well as actual violence.**
- d. **Domestic violence *often* increases in severity and frequency over time.** This is a very important point for law enforcement officials to keep in mind. Knowing that domestic violence is almost always part of an ongoing pattern of abuse can influence an officer to conduct a thorough criminal investigation.
- e. Understanding the escalating severity of domestic violence, coupled with the knowledge that **it can ultimately end in homicide** is important for avoiding this outcome.

3. Activities that are *not* domestic violence:

- a. just an argument or disagreement between partners;

VERBAL ATTACKS: People can be angry with one another without responding with violence. A verbal attack by a person who has not been physically assaultive or threatening in the past is very different than a verbal attack by a person who has previously used violence, or threats of violence.

- b. a problem that can be worked out by talking;
- c. a minor or isolated incident that is not part of a pattern of control or abuse; or
- d. caused by drugs or alcohol.

ALCOHOL AND DRUGS: Although alcohol and drug abuse by the assailant is often a factor in domestic violence, it does not *cause* the violence—domestic violence assailants abuse their partners whether intoxicated or sober. However, evidence exists that assailants with a history of severe alcohol and drug abuse are violent more frequently and inflict more serious injuries on their victims than do assailants without this history. (Okun 212)

Additional Resources:

Bureau of Justice Statistics, U.S. Department of Justice, “Female Victims of Violent Crime” (Washington, DC: 1991).

Anne L. Ganley, “The Impact of Domestic Violence on the Defendant and Victim in the Courtroom,” in *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases, A National Model for Judicial Education* (San Francisco: The Family Violence Prevention Fund, 1991) Ch. 2.

Susan Schechter, *Woman and Male Violence* (Boston: South End Press, 1982).

C. CRIMINAL AND ABUSIVE BEHAVIORS USED BY DOMESTIC VIOLENCE ASSAILANTS

NOTES ON ASSAILANT BEHAVIOR

Physical violence against a partner is not an isolated incident. It usually occurs in a context of ongoing abuse which is being employed by the assailant in order to gain control over the victim. In some cases, this results in criminal behavior. While some abusive behaviors are criminal in and of themselves, others may point to the presence of violence in the relationship. Physical assault is usually only one behavior in a pattern of ongoing abuse and violence.

Sometimes the assailant's non-criminal abuse has greater impact because in the past it has been backed up with actual physical assaults.

Non-criminal abuse can be extremely serious. Some actions that are defined as non-criminal meet Amnesty International's eight categories of psychological torture:

1. isolation of the victim;
2. induced debility, producing exhaustion, weakness, or fatigue (for example sleep or food deprivation);
3. an individual monopolization of perceptions, including obsessiveness and possessiveness;
4. threats of harm to the victim or the victim's family and friends, and other forms of threat;
5. degradation, including humiliation, name calling and insults, and denial of privacy or personal hygiene;
6. forced drug or alcohol use;
7. altered states of consciousness produced through hypnotic states; and
8. occasional random and variable reinforcers or indulgences, partial reinforcers that keep alive the hope that the torture will cease. (*Dutton 26*)

1. Some of the types of criminal behavior used by assailants.

- a. **Physical abuse** is the most obvious type of abuse. It is manifested by hitting, pushing, shoving, kicking, strangulation, use of a weapon, etc. Physical abuse is not a one-time only incident. Often the level and frequency increases over time, especially without intervention.

NOTE: The actual laws relating to these crimes will be covered in chapter 2, “Laws Regarding Domestic Violence.”

- b. **Sexual abuse** ranges from the assailant treating the victim as a sexual object to actual rape (regardless of marital status). Sexual abuse becomes criminal behavior when the violent partner forces sex on the victim, physically attacks sexual body parts, or forces the victim to participate in unwanted sexual activities, such as having sex in front of the children.
- c. **Threats of violence** (e.g., against victim, children, family, friends, etc.).
- d. **Stalking** can include following, calling, harassing the victim at home and at work, etc. It can also include threats and “friendly” stalking, where the perpetrator sends unwanted poems, flowers, etc., thereby letting the victim know that the stalker controls the situation and has access to the victim.
- e. **Kidnapping**, or threatening to kidnap, the victim or a child.
- f. **Destruction of property.**

NOTE ON DESTRUCTION OF PROPERTY: A common tactic is to destroy an item belonging to the victim, such as a family heirloom or gift from someone the victim cares about. A victim may feel great fear and intimidation when faced with the choice of leaving all of the family’s possessions at home where the assailant has access to them. The assailant may have broken down doors, torn out phones, put holes in the wall, and destroyed toys and other family belongings in the past.

CASE EXAMPLES

. . . he wrote bizarre notes, came to her house, offered her money, and often told her he loved her. . . . he said he would wait for her to die and then dig up her body so he could have her. (*National Institute of Justice*)

Another woman reported that after staying in a motel for several days “Her husband started calling her place of work to harass her, sent his friends over, and even came to one of her classes at the school where she taught. . . .” Eventually she returned to her husband. (*Testimony before the Michigan Women’s Commission 38*)

CASE EXAMPLES

One woman witnessed a succession of 12 kittens tortured and eventually killed by her husband. (*Dutton 24*)

. . . he would bring the pet. I would never go out and buy the puppy . . . because I had already experienced what would happen, but he’d bring the dog home or bring a puppy and the kids would love it. There was always that threat that if you don’t do this, that dog’s going to be dead. And of course, we’d seen it happen so many times, and he always made the kids watch that, the puppy being hung over the door. (*Victim 3, Personal Interviews, Kramp*)

NOTE ON INJURY TO PETS: The assailant may have killed family pets in the past or have specifically threatened to do so. Pets are sources of comfort to the victim and children. Fear of what the assailant may do is often cited by victims as a reason that they are hesitant to leave, since in most cases pets must be left behind and will become another tool for the assailant to use to intimidate and coerce the victim.

2. Other types of abusive behavior the assailant may use.

NOTE: These behaviors alone do not constitute arrestable offenses. However, they often provide the environment in which domestic violence occurs. It is important to note that the criminal act does not appear in a vacuum.

- a. **Emotional abuse** may be exhibited by criticism, name calling, humiliation, manipulation through lies and mind-games, sleep deprivation, etc.

EXAMPLE: For a long time, I wouldn't call Elizabeth by her name. She was "the wife"—my possession, like an object. I realized through counseling that I wouldn't call her Elizabeth—wouldn't even *think* of her by name—because to do that would be to recognize her as an independent human being. (*Okun 126*)

NOTE: Name calling is not trivial; it erodes the victim's self-esteem and often leads to greater isolation.

- b. **Economic abuse** occurs when an individual controls all the money, making the victim ask for money and account for everything spent; this type of abuse would include denying access to any money the victim might have earned outside the home, or forbidding the victim to obtain a job. For example, the assailant might make the victim ask for grocery or gas money. This is a very effective method of control because the victim is denied the basic resources needed to leave.

CASE EXAMPLE: The victim is a nurse working in an emergency room. Her assailant continually goes to her place of work and checks each emergency room to see if she is having a sexual relationship with a patient. This harassment resulted in the victim losing a job. (*From the case of a Michigan domestic violence victim*)

The implementation of such a tactic may be subtle—it may even seem chivalrous. The individual who claims to believe that a partner should not work and/or handle finances because of their natural “roles” or because the other partner is not capable of handling a particular job or task may end up forbidding the partner to have a job or even to leave the house with money.

- c. **Using children as pawns in order to control or manipulate the victim** (e.g., accuses victim of being a bad parent, threatens violence against the children, uses parenting time [formerly called visitation] to harass or keep track of the victim, assaults the victim in front of the children, removes the children after each violent episode to ensure that the victim will not flee).

NOTE: Threats to gain custody of the children are *not* idle. Courts often award custody and parenting time (what was formerly called visitation is now called parenting time in court orders) to assailants. One study found that 62 percent of fathers who won custody had physically abused their wives during marriage or during the custody struggle. Many victims return to stay with their assailants rather than risk losing their children (*Chessler, especially page 72*).

CASE EXAMPLES

[He said,] “If you leave, I’ll get custody because you’ll have abandoned me and the kids.” (*McGee 7*)

He beat my little boy real bad. My son was bruised and bloody all over, and he looked just terrible for days. And my husband would point to him and say to me, “Don’t you feel awful you didn’t stop me?” or “You’re some rotten mother not to try and protect your son.” And it seemed to me after a while that that was why he had beaten the child. Because the boy hadn’t done anything wrong, nothing even to deserve a spanking, much less a beating. (*Okun 128*)

d. **Using intimidation** by instilling fear through looks, gestures and actions (e.g., smashing objects, destroying property, placing self between victim and an escape route, etc.).

CASE EXAMPLES

When asked . . . why . . . he cut telephone cords in his house, the man shouted, “Why should she talk on something I paid for?” (*Hoffman 64*)

Mike often assured Brenda that if he went to jail, it wouldn’t be for wife-beating—it would be for her murder. When he was angry, he would shatter knickknacks or punch a hole in the wall right next to her head. . . . “So I learned how to say ‘yes’ to him, to diffuse the situation.” (*Hoffman 28*)

e. **Isolating** the victim by controlling who the victim sees and talks to, belittling the victim’s family and friends.

ISOLATION—a tactic often used by the assailant to cut the victim off from the outside, from family, friends and other relationships—makes the assailant’s emotional abuse more effective. A victim who is isolated is more likely to believe what the assailant says about the victim and the world.

CASE EXAMPLE: One woman came to the shelter shortly after being beaten for talking to a woman neighbor for a few minutes. Her boyfriend’s objection was that he had left her a schedule to keep, and socializing wasn’t part of it. (*Okun 126*)

f. **Threatening to commit suicide** and leave the victim responsible for the suicide. Statistically, suicide and threats to commit suicide on the part of the assailant increase when the victim is leaving the relationship.

g. **Making repeated threats** to engage in the above behaviors.

Additional Resources:

Anne L. Ganley, “The Impact of Domestic Violence on the Defendant and Victim in the Courtroom,” in *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases, A National Model for Judicial Education* (San Francisco: The Family Violence Prevention Fund, 1991) Ch. 2.

Ellen Pence and Michael Paymar, *Educational Groups for Men Who Batter: The Duluth Model* (New York: Springer, 1993).

D. ON-SCENE ASSAILANT BEHAVIOR

1. Ways that assailants may present themselves to officers.

- a. Assailants often **rationalize** their own violent behavior as having been caused by the victim. They may describe their violent behavior as a simple reaction caused by some action, attitude or condition of the victim.

NOTE: Avoid being taken in by the assailants' justifications. Justifications for violence are not legitimate. For example, assailants often give motives for their violence that grossly exaggerate the "cause" or contradict the effect of that violence. In some cases, assailants claim to have resorted to physical violence because a spouse or partner was trying to break up the family, although it was obvious that the violence was a major cause of the family problems. The assailant's justifications can never excuse the violence.

Officers may also encounter assailants who blame their current partners for the violence even though they are known to have battered previous partners. Assailants frequently do not limit their violence to one specific relationship.

- 1) For example, an assailant may portray the victim as "hysterical," alcoholic, mentally ill or otherwise needing to be physically restrained. Frequently, the assailant will point to the victim's current condition as evidence of this. While the assailant may appear calm by the time police or others arrive, the recently assaulted victim may still be responding emotionally to the attack.

CASE EXAMPLES

In February of this year, my husband beat me again. He hadn't spoken to me for three months prior to that, and I had said that we had to go to a counselor. In lieu of that, he beat me and kicked me to the floor. Then he kicked my breasts with his shoes on, he kicked my genitals, and I bled and hemorrhaged. That night, he called two people from our church, whom he knew, and asked them to witness how over-wrought I was. At the time they arrived, my arms were handcuffed behind my back. He later handcuffed me to the banister. (*Victim's testimony before the Michigan Women's Commission 32*)

I would be hysterical and screaming, and the children would be crying, and the police would come in, and to my amazement, his total behavior would just change. He'd be very calm, shake their hand. . . . And he would say, "I've had a bad day. . . . Well, you know. . . ." (*Victim 1, Personal Interviews, Kramp*)

- 2) Assailants may also complain that they are the real victims in the family.

EXAMPLE: Before I started dealing with this issue I felt that I had picked all these women that were bad partners and they didn't treat me respectfully, and somehow they were all to blame for the way I chose to act and behave towards them. . . . The night I was actually arrested. . . . I had beaten my partner quite badly: punched her, kicked her, slapped her, thrown her down on the ground, and through all of this, of course, I said, "I was restraining her. She kept coming at me. What am I supposed to do?" (*Abuser 1, Personal Interviews, Kramp*)

- 3) Another justification assailants give for violence is that they are trying to keep the family together, that the victim is destroying the family.
- b. Assailants will also **deny or minimize** the violence when confronted with evidence of their violent behavior. Assailants commonly attempt to explain that the victim “bruises easily,” that there was “just a little pushing” and no real violence, or that the assailant “just got a little out of control.” An assailant may admit that there was an argument but say “it was nothing and everything is fine now.”

CASE EXAMPLES

He'd always just deny it or say it hadn't happened or say it had been an accident. Even to this day he'll argue, "I never hit you when you were pregnant. That's a lie. That's the last thing in the world I'd do." He still insists he's not a violent man. He'll say, "That's one thing I hate is a man that hits a woman." (*Dobash and Dobash 118*)

Robbie was very resentful about coming to counseling. He said, "I'm not any wife-beater. This happens once, at most twice, a year." In the course of further questioning, he recounted five incidents from the past four months. (*Okun 40*)

- c. The assailant will also blame the victim for the violence, stating that the victim was the one who became physical. This type of explanation frequently omits details of the event. For example, when showing the officers scratches made by the victim, the assailant may omit that they were made while the assailant was strangling the victim. The assailant may have been physically hurting the victim or engaging in other activities, such as:
 - 1) attempting to intimidate the victim by breaking objects, pounding walls or threatening injury to children, family, friends or pets;
 - 2) physically blocking the victim's means of escape; or
 - 3) attempting to force sex on the victim.

- d. The assailant may **make complaints to the police department against the victim** in an attempt to counter any complaint the victim has made in response to the assailant's violence.
- e. The assailant may **appear calm, non-combative and cooperative**.

CASE EXAMPLE: The officer came in. My husband was calmly sitting in the living room and he said, "I never touched her officer. It's all in her mind." I said to the officer . . . "Would you like to see the bruises?" . . . I proceeded to roll up my pants leg, held out my arms, and showed him the big, fresh bruises. I ran my fingers through my hair, and it came out by the handful where he had beaten me. (*Testimony before the Michigan Women's Commission 46*)

- f. The assailant may **attempt to draw officers in** by making statements such as "What would you do?" "You know how it is?" or "You seem like a reasonable person. What do you think I should do?"

CASE EXAMPLE: It's easy to find an "in" or a "bond" with these guys when you start talking about "the old lady" or the "bitch" because she didn't . . . doesn't raise the kids right, the food was cold, she's been out all night. "What am I supposed to do? I work hard all day. . . ." (*Abuser 1, describing his usual demeanor with officers, Personal Interviews, Kramp*)

NOTES ON ASSAILANT BEHAVIOR

Assailants also blame their behavior on outside factors such as employment problems, alcohol, drugs, stress. Officers must not be drawn in by such stories; it is not necessary to judge who is “at fault” or if the assailant had a good reason for being angry. While the assailant may seem to have had a right to be angry, anger does not give an individual the right to assault anyone or to forcefully assert will and control. The assailant’s rationalizations are just that—rationalizations.

Assailants typically don’t beat their bosses, neighbors, etc. when mad or stressed. The fact that they can control their behavior in these settings shows that abuse is not due to a lack of control, anger, stress, or other outside factors commonly cited. It is a choice.

- 2. Strategies used by the assailant to intimidate the victim to not participate, and to interfere with investigation and prosecution:**
 - a. calling the police requesting information on the victim’s location;
 - b. attempting to file false police reports if the victim has left (e.g., missing person, stolen car, kidnapping, etc.);
 - c. attempting to prosecute the victim;
 - d. attempting to prevent the victim from following through with a case (e.g., threatens, begs or manipulates the victim to drop charges; threatens, begs or manipulates the victim into withdrawing, denying or explaining away her original statement; promises to change, etc.);
 - e. using a variety of strategies to delay court hearings and increase the victim’s financial hardship (e.g., changes lawyers, asks for continuances, etc.);
 - f. giving the victim erroneous information about the criminal justice system to create confusion or prevent the victim from acting (e.g., withholds court notices or gives victim wrong appearance information, etc.); and

CASE EXAMPLE: I initiated a Department of Social Services investigation. I went to the Friend of the Court. I went to five different attorneys that I thought she would probably use under the guise of wanting to use them in this case so that she couldn't use them. I used an attorney who was a mutual friend of ours that she had worked for because he knew the judge I was going in front of. . . . (*Abuser 1, Personal Interviews, Kramp*)

Additional Resources:

Anne L. Ganley, "The Impact of Domestic Violence on the Defendant and Victim in the Courtroom," in *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases, A National Model for Judicial Education* (San Francisco: The Family Violence Prevention Fund, 1991) Ch. 2.

Ellen Pence and Michael Paymar, *Educational Groups for Men Who Batter: The Duluth Model* (New York: Springer, 1993).

E. ON-SCENE VICTIM BEHAVIORS

1. Behaviors common to victims of violence or trauma.

The officer will find that many victims of domestic violence display the same behaviors as survivors of *any* life-threatening situation. Whether the victim is male or female, whether reacting to an accident, natural disaster, crime or other catastrophe, survivors tend to display certain characteristic responses. The officer needs an understanding of trauma-induced reactions in order to effectively secure the scene and interview the victim.

While facing the actual violence, victims usually focus primarily on self-protection and survival. As danger levels become overwhelming, individuals may withdraw and fail to recognize or utilize available escape opportunities. Subsequent reactions can include shock, denial, disbelief, fear, withdrawal and confusion.

NOTE: Victims' reactions to domestic violence are similar to the reactions of victims of other traumatic experiences. However, the ongoing nature of domestic violence, the relationship between the assailant and victim, and the pattern of the assailant's behavior result in additional reactions in domestic violence victims. Items 1 and 2 of this section point out both the similarities and the differences between victims of domestic assault and victims of other types of trauma.

- a. **Victims may seem panicked or excited.** For example, victims may be unable to relate events in a systematic and logical sequence. They may speak very loudly or quickly, skipping words and thoughts.

A victim's inability to relate events in accurate chronological order does not indicate lying. Head injury or the influence of alcohol or drugs may account for such behavior. In addition, victims focused on immediate survival are not necessarily focused on preserving an accurate account in chronological order for the police report and later prosecution, even when it would help in their long-term safety.

- b. **Victims may "shut down"** or become un-responsive. Believing that no one can understand the situation or that blame may be directed toward themselves, victims may withdraw from others, including family and friends. Or the withdrawal may take the form suffered by many survivors of traumatic events, in which the victims become unable to recognize or take advantage of escape opportunities or assistance. The withdrawal may be so complete that victims appear to react automatically to what others suggest.

- c. After reacting to the immediate violence, **victims sometimes feel that things will somehow work out okay**. They may believe that the violence won't reoccur, that the assailant is genuinely sorry, that they can do something to prevent the violence from happening again, etc. Or they may simply be experiencing the sense of euphoria reported by many victims of traumatic events. As a result, victims may fail to take the action necessary to protect themselves.

2. Behaviors domestic violence victims may display at the scene.

NOTES ON VICTIM BEHAVIOR

Remember, unlike most other trauma, domestic violence is not a onetime catastrophe visited upon an individual by chance. Domestic violence is almost always part of an ongoing pattern of abuse perpetrated by an individual with whom the victim has had an intimate relationship. In fact, those who work with victims of domestic violence point out that victims report that by the time the police are called, the violence has usually been going on for some time and the victims have tried many other means of stopping the violence on their own before calling the police.

The officer responding to a domestic violence call will encounter many of the survival strategies developed by the victim. Although some of these survival mechanisms may not make sense to an outsider, they have kept the victim alive up to this point. Officers who understand the reasons for the behavior may be less frustrated.

- a. A victim may **minimize or deny the violence**, saying that nothing happened or that it was not so bad. In doing so, the victim is often acting out of feelings of fear, love or resignation that nothing will help. When relating a battering experience, even to a trusted friend or relative, the victim may still use language that minimizes the violence and injuries in some way.

CASE EXAMPLE: "He has never beaten me to the point where I need medical care, rather he limits it to black and blue arms, bloody ears from pulling them so hard while he screams at me, welts on my back from hard slaps and never-ending verbal abuse. . . ." (Bowker 10)

Victims may fully acknowledge the violence to themselves but deny or minimize it to the police out of fear that the assailant will retaliate because the victim participated in the investigation.

On the other hand, victims may minimize or deny the nature of the violence even to themselves, not perceiving it to be as bad as it is.

- 1) Perhaps the victim perceives that society tolerates violence in families or between partners, and therefore feels helpless to stop it.
- 2) Victims may also minimize the nature of the violence to themselves because they love their assailants.
- 3) A victim may believe that the assailant is sorry or that the violence was an aberration. Domestic violence assailants often fluctuate between violence and times of loving contrition. During these times, assailants show remorse, promise to never do it again and may promise to seek help or counseling. An assailant may try to make amends, allow the victim some freedoms and put the victim on a pedestal. An assailant may appear to be vulnerable, discussing past hurts.

Therefore, a victim can rationalize the violent behavior and believe that the assailant is not always violent, that some outside event or circumstance caused the violent behavior, and that there is hope that the victim's love and loyalty will cause the assailant to change.

- b. A victim may **rationalize the violent behavior** to the point of being willing to take responsibility for causing it. The outbreaks of violence may be attributed to the victim's inability to fulfill a properly supportive role in the face of the stresses and difficulties of the assailant's job or life.

CASE EXAMPLE: "I was really, really afraid. I realized that he could really hurt me. What did I do? I tried to make things better. I tried not to provoke him. The only control I felt I had was if I could get him to stop using drugs. So that became my focal point." ("Laura," a victim interviewed by White)

This, and many other examples provided by service providers show that victims frequently rationalize the behavior of their assailants.

The victim's sense of reality may come to depend to a great extent on the assailant. Needing to focus on the assailant's whereabouts for self-protection, a victim may use survival techniques—such as prioritizing the assailant's desires and views—on a daily basis. This constant coping can alter perceptions until victims simply accept their assailant's views about the victim and about the world. Victims start to take responsibility for the violence, to believe they can control and eliminate the violence through their behavior—because this is what their assailants tell them. And victims actually may wish to believe they are responsible, because this would mean they also have the power to stop the violence. An assailant can say a number of things to present the violence as the responsibility of the victim.

CASE EXAMPLE: “I had just gotten out of the hospital about two weeks ago. [My husband] was leaving for a two month Army stint and he got mad because his uniforms weren’t packed and ironed right. That time I got stomped and kicked into unconsciousness. . . .” (Bowker 9)

NOTES ON VICTIM JUSTIFICATION

A victim of domestic violence does not necessarily have any more information about *why* the battering occurs than anyone else in the community and therefore may seek help from professionals—ministers, counselors, etc.—in an attempt to discover the cause of the violence. If the professionals do not have accurate information on domestic violence, and instead attribute it to drug and alcohol abuse, unemployment, etc., the victim may very well cling to this information and hope that greater understanding or support can stop the violence.

Individuals in relationships that have problems want to believe that they have some ability to make positive changes to fix whatever is wrong. A victim of domestic violence is particularly vulnerable to professionals who attribute the “cause” of violence to a common community problem such as drug or alcohol addiction. Because addiction is a common problem with prescribed methods of treatment leading to recovery, a victim may find it to be a particularly appealing explanation. However, overcoming drug and alcohol addiction will not cause the assailant to stop the violence.

Batterer intervention counselors and batterers point out that drug or alcohol abuse is a common tactic that batterers use because they have learned that society will minimize the violence if it was “caused” by drug or alcohol addiction or use.

Isolation also contributes to a victim’s willingness to accept the assailant’s charge that the victim is responsible for the abuse. Because of jealousy and possessiveness, the assailant often attempts to increase the victim’s reliance on the assailant and the assailant’s views by cutting the victim off from contact with family and friends and limiting the victim’s behavior. This can take a number of forms.

CASE EXAMPLE: “The sad part of it all was he enjoyed the power his meanness gave to him. When I didn’t work, I was lazy. When I did, I was only working to meet other men. I could not talk to people who were old friends, or he would embarrass them by being abusive verbally. He would ask friends of my father ‘how often they slept with me.’ I gradually cut all people out of my life, and it did not matter; he accused me of sleeping with my psychiatrist and any other service persons I encountered.” (Bowker 16)

The isolation is furthered by friends and family who blame the victim and cut themselves off, especially if the assailant has threatened or retaliated against them in the past or if the victim is unable to end the relationship. Victims may still be in a relationship only because their assailants tracked them down and forced them back, but observers will often believe that staying under even these circumstances involves consent.

The isolation, in all of its forms, furthers the victim’s dependence on the assailant because there is no longer access to others who could provide a reality check on the victim’s perceptions.

- c. Victims often **show a reluctance to discuss the specifics** of what happened, especially if the assailant is present.

The victim may be reluctant to talk about the incident because **fear of retaliation from the assailant is greater than fear of the consequences of not cooperating with the police**. Perhaps the assailant has threatened to harm the victim and/or the children if the victim says anything to the police.

CASE EXAMPLES

“He came back to town once after I had filed for divorce, forced his way into the house, beat me up, and held a gun to my head. One of the children sneaked out of the house and called the police from a neighbor’s. I don’t know how long it took for the police to arrive, but it seemed that I sat for hours with the gun pointed at me, he screaming obscenities at me and vowing to kill me if I moved.”
(Testimony before the Michigan Woman’s Commission 49)

“The only reason that I stayed was fear. It had nothing to do with wanting to be there. It was just total fear of what would happen if I left and had no place to go. Even if you move into an apartment, a man can knock a door down in two minutes. I have seen it done. Before the police can arrive, a woman can be dead. That’s fear. That’s the fear of leaving somebody.” *(Testimony before the Michigan Women’s Commission 49)*

When a victim has been let down by the system when seeking help, he or she may believe that nothing can keep the assailant away. Sometimes when a victim seeks assistance from medical personnel or religious leaders, the assailant is believed, the violence is overlooked or dismissed, or the victim is told to make the best of things.

CASE EXAMPLES

**“After we separated I told him if we were to get back together he had to get counseling. He went three times to our family doctor (who is Baptist) who told him to read the Bible and pray to God and I would come back to him. Our doctor told me I should have stayed in the marriage and I was rebelling at God by leaving the marriage.”
(Bowker 50)**

**“When I went to a mental clinic for help, the Doctor which was a man, made me feel as though I was the one with the mental problem and suggested I use tranquilizers.”
(Bowker 69)**

In addition, the victim may be embarrassed about the violence. Violence at the hands of a loved one is an intensely personal violation. The victim may also feel ashamed about the personal violation. For example, a victim may be very reluctant to discuss sexual assault. When discussing such assault, the victim may not understand it as rape and may not refer to it as rape.

- d. The victim may **ask the police to leave**.

Again, even a victim who called the police might fear the assailant more than the consequences of not cooperating with the police. The victim may not want to do anything that would make the assailant angrier since the victim may believe that the victim will be at the assailant’s mercy once the police have gone.

Victims may also fear the police or other government agencies. Perhaps their assailants have intimidated or scared them by telling them that they will be the ones who get in legal trouble for cooperating with or drawing the attention of the police.

- e. The victim may **ask the police not to arrest** the assailant.

1) A victim’s request to let the assailant go without arrest can stem from a number of factors:

- a) fear that an arrest will increase the assailant’s violence
- b) rationalization of the assailant’s behavior;
- c) belief that the assailant will now change since the assailant may have agreed to counseling;

- d) anxiety about possible economic consequences, for example, a victim may fear that the family will suffer economically if the assailant misses work because of an arrest; or
 - e) family and/or community pressure to avoid police involvement.
- 2) In calling the police, the victim's goal was immediate safety—to stop the violence. After that has been achieved, the victim may:
- a) believe that the assailant has learned a lesson and will now change;
 - b) fear what the assailant will now do in retaliation; or
 - c) fear the unknown.
- 3) In order to proceed, the victim needs accurate information on the legal system and may also need time to absorb the information.
- f. The victim may go so far as to **try to physically protect the assailant from the police.**

Victims' occasional willingness to physically defend their assailants against the police highlights their need to show loyalty to their assailants, thereby revealing their **greater fear** of the consequences of turning against their assailants than of not cooperating with the police. Defense of their assailants may take the form of yelling, calling names, hitting, etc. Taking such drastic action is a strategy victims sometimes might employ out of fear of retaliation upon the assailant's release from jail, fear of the consequences an arrest might have for the family, rationalization, etc.

- g. Victims may **insist that they do not want their assailants prosecuted.**

Fear of the assailant or the system, rationalization, love, embarrassment, lack of resources can all factor into the victim's desire to avoid getting involved in the prosecution.

EXAMPLE: The police come to the home. The batterer is so aggressive that the police call for backup. The batterer ends up out on the porch scuffling with police, throws half of them off the porch along with himself. He is giving his partner a message. "You press charges against me, you're dead. If I'll do this to the police, just think of what I'll do to you." This is a lesson you're never going to forget. (*Abuser Counselor 3, Personal Interviews, Kramp*)

A victim may have inaccurate information about how to proceed or about the consequences of proceeding. For example, victims sometimes think that their testimony will send their assailants to prison for lengthy periods of time or that they could lose their children if they get involved in the legal system. Or family, friends, a minister, etc. may have persuaded them that prosecution is not the answer to the problem. Assailants may have promised to seek counseling if their victims don't testify against them. A victim may not have the transportation, the child care or the time to commit to a possibly lengthy legal process.

- h. Victims may **express anger with their assailants**. They may express anger by yelling, calling names, hitting, etc. ***Because of the police presence, victims may feel safe from immediate retribution from their assailants.***

3. Some of the circumstances in victims' lives that may explain at-scene behavior.

- a. Victims are **frequently isolated as a result of their assailants' control** over their activities, friends or contact with their families.
- b. Victims are often **forced to use survival techniques on a daily basis**. For example, a victim may need to focus on the assailant's whereabouts for self-protection.
- c. Victims **may believe that they have some ability to control the violence**. A victim may observe the assailant and try to predict any violent behavior. In order to circumvent the violence, victims may attempt to change their own behavior or to put the needs and desires of their assailants first.
- d. Victims **may blame themselves**. Frequently, assailants convince their victims that their violence is the fault of the victim. The victim may feel responsible for not changing enough to stop the assailant's violence. In addition, a victim may accept blame simply because it is impossible for the victim to believe that someone who professes love would also be violent.
- e. Victims **may become very frustrated** and angry because the violence continues no matter what they do. Victims often must hide their emotions for fear of their assailants, but they may act upon these feelings, or "explode," when finally feeling safe (i.e., when police are present).

Additional Resources:

Mary Ann Dutton, *Empowering and Healing the Battered Woman* (New York: Springer Publishing, 1992).

Frank M. Ochberg, *Post Traumatic Therapy and Victims of Violence* (New York: Brunner/Mazel, 1988).

F. CONSEQUENCES VICTIMS FACE WHEN LEAVING

1. Victims are at greatest risk when leaving or when the assailant believes the victim is leaving.

- a. A 1993 study found that **victims are more likely to be killed by their assailants when they are estranged from their assailants rather than living with them** (Wilson and Daly). The risk of homicide is higher in the first two months after separation.
- b. In many cases the assailant has frequently threatened to kill the victim and/or the children should the victim ever leave. Having seen the assailant's capability for abuse and violence, **victims who consider leaving their assailants quite legitimately fear retaliation** against themselves, their children, other family members and friends. A victim's attempt to escape further abuse by leaving the situation often results in escalated violence, terror, harassment, stalking, etc. A victim who has attempted to leave and was stalked or retaliated against in the past might be especially afraid to try again.
- c. In addition to fearing retaliation, **a victim may feel safer staying where the assailant can be closely monitored** and where the victim can try to satisfy all of the assailant's demands in an attempt to avoid more violence. Since often victims' lives have been reduced to focusing on their assailants' whereabouts and moods in order to protect themselves, they may feel safer staying with their assailants since staying allows them to stay tuned to their assailant. The idea of leaving may feel like turning their backs to their assailant, which could be very dangerous.

Although this might seem illogical to outsiders, especially those who know that assailants often escalate the level of violence over time, it has its own internal logic for the individual living in the situation. A victim may believe that greater violence can be avoided by staying, even if, in fact, it cannot. **Since nothing the victim did caused the violence, nothing the victim does will stop it.**

NOTE: How victims' experiences tie into the behaviors that were discussed in the previous section.

WHEN THE VICTIM RETURNS: Domestic violence advocates, police officers, anyone who invests time in working with victims of domestic violence sometimes report feeling frustrated, fearful, even angry in their attempts to assist the victims, because it seems as if many victims just go back to the same violent relationships. Those working with domestic violence victims must keep in mind that individuals need to make their own decisions, and the victim is making decisions based on how the victim perceives reality. Victims quite legitimately fear leaving and must often go through a process of breaking away from the assailant before being able to permanently leave.

REMEMBER: Leaving can be *dangerous* and often it is a *process* rather than an immediate reaction to a single occurrence of abuse.

2. Leaving, like other major life changes, is a process. Victims face numerous barriers to leaving.

A victim may not be able to make the life-changing decision to leave an assailant during a particular moment of crisis; anyone would have trouble making an informed, rational decision at such a time. The experience of those working with victims is that many victims eventually leave their abusers. However, leaving is usually a process, and one intervention may not prevent return calls. A victim may need to "test the waters," to go through the process a few times before feeling capable of making a final decision to leave; each successive leaving might be used to test the various systems as the victim prepares for the final break. The following discussion examines a few of the considerations a victim must work through in making the decision to leave.

- a. **Victims may believe they cannot make it on their own because their assailants tell them they cannot.** Victims' lives often revolve around their assailants, and the enforced isolation can narrow their world to the point that they may lack basic knowledge about how to seek assistance in setting up independent lives. In addition, victims frequently lose self-confidence as a result of the abuse.

Therefore, when their assailants tell them they cannot make it, they believe the assailants.

CASE EXAMPLE: “My husband not only convinced *me* that I was ‘ugly, useless, underdeveloped, and not fit to be called a human being’ but he managed to convince two of our three children the same.” (Bowker 16)

b. Victims may also be economically unable to leave and care for themselves and their children.

- 1) Finding affordable housing or even obtaining the money to start up a household may seem like insurmountable obstacles. For example, many victims do not work outside the home, or are not allowed to, and depend on their assailants for the family income. On the other hand, victims who work outside of the home may fear that threats and harassment from their abusers will threaten their jobs.

HOMELESSNESS: Victims of domestic violence who wish to leave their assailants may also face the very real possibility of homelessness. A 1989-1990 Michigan survey showed that sixty percent of women who return to abusive partners do so because of lack of housing. (Appel)

CASE EXAMPLES

Acknowledging that she had a little more mobility than some women because she had her own credit cards, a car and a little money, one victim reported that such items didn't usually do her much good: "Usually, before he put me out, he would go through my purse and take my keys, credit cards, and money. The last time, apparently, he forgot, and I managed to get out with my car keys and \$30.00. It was two a.m., and I drove around and inquired at several motels and made a number of calls before I finally found a vacancy." (*Testimony before the Michigan Women's Commission 38*)

"During those 10 years, I lost a lot of jobs because of the beatings. Once he came right to my place of work and beat me up. I eventually lost my job. A couple of jobs I lost because I was just too beaten up to go to work." (*Testimony before the Michigan Women's Commission 50*)

- 2) Victims may feel unable to leave because of a chronic illness or health problem.

A victim who has a chronic illness or disability that is covered under a partner's health insurance may face losing coverage by leaving. Victims with physical or mental disabilities may lack the necessary support in the community, or even the ability to identify options or positive courses of action to escape the violence. In addition, alcohol or drug addictions may inhibit a victim's ability to assess the situation and take action to change it.

- c. In addition, **a victim may be pressured by family, friends, clergy, etc., not to leave.** Many individuals and institutions still prioritize keeping the family together no matter what the circumstances are. A parent may feel additional pressure to stay with the children's other parent. The victim may believe that the children should live with both parents regardless of what the assailant has done to the victim. The victim may feel an obligation to keep the family together if the assailant is not abusive to the children.

CASE EXAMPLES

"I appealed to my parents for help, but they believe that a woman belongs with her husband, regardless of what he does. They told me I deserved my beatings because the wife's place is in the home and my desire to go to school was just an attempt to be superior to him." (*Testimony before the Michigan Women's Commission 90*)

"The feeling I got from our church was that I was to suffer in silence. (Since we have separated they will not associate with me.)" (*Bowker 73*)

- d. **The assailant may have assured the victim that the violence will stop.** A victim may believe that the relationship is fine apart from the violence because the violence is sporadic, the assailant acts remorseful, the victim believes the assailant and cares about the assailant; the victim just wants the violence to stop. The victim may believe that police intervention will scare the assailant enough to stop future assaults.

CASE EXAMPLES

"Each time he beat me, my husband would say, 'Oh, I am so sorry. I didn't mean to hurt you. I'm going to change.' Well, when you love somebody, you believe him. I kept thinking that he was going to change. He would really light into me bad, and then he would be so sorry. He'd say that he would never do it again and he really loved me and he loved the kids and he would try harder.

So then he might go for two or three months before it would happen again. Nothing really ever triggered it off. One time I burned an egg and he went into a rage, which is ridiculous. One time I went out and totally destroyed our car. I hit a deer and completely demolished the car and he never said a word." (*Testimony before the Michigan Women's Commission 46*)

Additional Resources:

Mary Ann Dutton, *Empowering and Healing the Battered Woman* (New York: Springer Publishing, 1992).

Anne L. Ganley, "The Impact of Domestic Violence on the Defendant and Victim in the Courtroom," in *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases, A National Model for Judicial Education* (San Francisco: The Family Violence Prevention Fund, 1991) Ch. 2.

Susan Schechter, *Woman and Male Violence* (Boston: South End, 1982).

G. CONSEQUENCES VICTIMS MAY FACE WHEN PARTICIPATING IN PROSECUTION

1. **Life-threatening consequences the victim may face for participating in the criminal justice system.**
 - a. **The assailant may have threatened to kill or injure the victim and/or the children in order to prevent the victim from participating.** The victim has experienced the assailant's violence and legitimately fears that the threats will be carried out. **In addition, the assailant may threaten the victim with possible legal consequences for participating.** For example, the assailant may say that the victim will not be believed, that the assailant will be found not guilty and will be able to use this finding against the victim to gain custody of the children.

NOTE: It is important to have an understanding of the possible consequences that victims face in deciding to assist in the prosecution of their assailants. Such an understanding will help reduce frustration when encountering victims who seem unwilling to follow through in the prosecution of their assailants.

CASE EXAMPLE: An example of a victim being pressured to drop assault charges is reported by the Michigan Supreme Court Task Force on Gender Issues in the Courts. One witness to the Task Force testified that she was "advised by her attorney to drop felonious assault charges against her husband lest the judge put her children in foster care." (*From the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts 23*)

- b. **The system cannot always provide safety from the assailant to the victim who participates.** There have been cases of prosecuted assailants who return to assault the victims. A victim may have experienced this firsthand or heard stories of it. The victim is very likely to have been threatened with such retaliation by the assailant.

- c. **Assailants know where to find their victims, at work or at home**—they may still be living together—and can continue to intimidate their victims throughout the investigation and court process. The assailant also often pursues the victim to the victim’s workplace.
2. **The victim may face numerous obstacles for participating in the criminal justice system.**
- a. **The victim may have had a bad experience within the criminal justice system in the past and suffered consequences for participating.** For example, case loads may dictate that the prosecutor responsible for the current proceeding meets with the victim for the first time only minutes before the start of the proceeding, making it difficult for the prosecutor to effectively proceed with the case. Perhaps the victim has experienced this and feels that cooperating is futile. In addition, the victim may not have been believed in past attempts to gain assistance from the criminal justice system. The judge may have refused to grant a Personal Protection Order (PPO), or granted a “mutual restraining order,” implying that the victim was partly at fault for the violence.

CASE EXAMPLES

The Task Force reported that prosecutors sometimes encourage victims to drop charges through the use of devices such as a “cooling off period” because the prosecutors anticipate that the victim will not follow through anyway. (From the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts 28)

An advocate, who gave testimony before the Task Force, told about a judge who “admonished both my client and the assailant for their ‘childish’ behavior and encouraged them to ‘act like adults for the kid’s sake,’ after the assailant had forcibly entered the woman’s apartment and attempted to strangle her.” (From the Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts 23)

NOTE: The victims' fears of cooperating with the criminal justice system will, hopefully, lessen as communities develop coordinated responses. However, past system failures may legitimately cause the victim to be concerned about whether or not trying to work through the criminal justice system will be of great enough benefit to be worth the risks.

- b. **Assailants know their victims and can interfere with their ability to appear in court, etc.** In the past, some jurisdictions failed to take into account some of the unique aspects of a domestic violence case. For example, the assailant knows where to find the victim and may even live in the same residence. This provides an opportunity to interfere with the victim through tactics such as preventing mail or subpoenas from reaching the victim or misinforming the victim about court dates and times.
- c. **Prosecution may make demands that drain the victim's resources.** This can happen when continuances and other system- or defense-initiated delays cost the victim time from work or when numerous court appearances cause a financial drain due to child care costs, transportation, etc. A victim can become exhausted physically, emotionally and financially by the process.
- d. **The assailant, family and friends may pressure the victim not to cooperate.** For example, if the violence has ceased since the arrest, assailants may tell their victims that they have learned their lessons and may beg and plead with the victims to not follow through. Also, the victim may be told by family and/or friends that the assailant has overcome the violent behavior and that to assist in prosecution would gain nothing and only hurt the family further.

CASE EXAMPLE: "His mother wanted me to go to the hearing and testify for him so he could get out. Her thing was you shouldn't hold hate. You have to forgive and go on. She told me [he] didn't mean to do that. Now, he wants to start a new life, he isn't doing drugs, he needs another chance." ("Laura," a victim interviewed by White)

- e. **Victims may not know their way around the criminal justice system.** Victims may feel intimidated and not know how to get the information they need or how to protect their interests. They should be referred to domestic violence service programs for assistance.

H. INDICATORS THAT CAN ASSIST OFFICERS IN ASSESSING WHEN AN ASSAILANT MIGHT KILL

1. It is critical that officers understand common indicators of a life-threatening situation.

Some assailants are more likely to kill in certain circumstances. According to the Bureau of Justice Statistics 1,326 women were killed by their husbands, ex-husbands or boyfriends in 1996. **The very magnitude of the problem shows how crucial it is that officers assess each domestic violence situation for the possibility of its becoming lethal.**

NOTES ON VICTIMS

According to the Bureau of Justice Statistics 30 percent of all female murder victims over age 14 were killed by an intimate compared to 6 percent of male murder victims between 1976-96. These figures represent cases in which the relationship between the victim and offender was known (72 percent of the cases).

In 1998 women were nearly 3 out of 4 victims of the 1,830 murders attributable to intimate partners. In 1976 women were just over half the approximate 3,000 victims. The percentage of female murder victims killed by intimate partners has remained at about 30% since 1976 (Bureau of Justice Statistics, Special Report, May 2000).

- a. No foolproof method exists for assessing the possibility that domestic violence will lead to homicide. However, **some assailants are more likely to kill their partners than others, and some assailants are more likely to kill under certain circumstances.**
- b. **One of the most important indications that a situation may become lethal is the word of the victim.** Victims know their assailants better than anyone—they know when their lives are in danger and they *must* be believed when they state they are in danger. However, if victims say they are not in danger, they may be coping with the violence by underestimating it. Therefore, officers should always conduct a thorough lethality assessment.

2. It is very important to assess the lethality at *each* intervention.

An assessment of potential lethality must be conducted for each domestic violence call. The process for conducting a lethality assessment will be taught in section H of Chapter 3. An assailant who stopped short of trying to kill a partner in the past may escalate the violence to the point of lethality over time or in certain situations.

An assessment of potential lethality must be conducted **even when the assailant has already left the scene**. The assailant knows the victim and can predict the victim's whereabouts and the whereabouts of the victim's family. Therefore, the assailant can easily stalk the victim and wait for an opportunity to strike.

3. Indicators of a potential life-threatening attack by the assailant.

Although there is no unfailing method for determining if a particular assailant will try to kill a particular victim in a given situation, there are a number of indicators to help in the assessment. Officers should be aware that multiple indicators may be present in a particular situation and/or the level of intensity of the indicators may vary.

- a. The **victim has left** the relationship or the assailant has discovered the victim wants to leave or file for separation or divorce.
- b. **Weapons are present**. If assailants possess weapons, especially guns, and have used or have threatened to use them against victims, other family members or themselves, this is a strong indication that they will attempt to do so. If the assailant has a history of arson or the threat of arson, it is a strong indication of lethality.
- c. The assailant has **threatened to kill**. Assailants' threats to kill their victims, other family members or themselves must be taken very seriously. Fantasies of either homicide or suicide must also be taken seriously.
- d. The assailant has easy **access to the victim** and/or the victim's family.
- e. A **history of calls** to police can help determine lethality. Prior contacts can give officers information as to the previous severity of violence shown by a particular assailant. A history of calls may also be an indicator of the potential severity of violence in and of itself—assailants often escalate the level of violence with repeated occurrences over time.
- f. If the assailant and victim are separated, **stalking behavior** may be an indication that the assailant is willing to engage in life-threatening behavior. This is especially true if the assailant has expressed the sentiment, "If I can't have you, no one will."
- g. The assailant has **hurt or threatened the children**.
- h. The assailant has **threatened to take the victim hostage**.

- i. The assailant has **killed or mutilated a pet**. Pets are often killed by domestic violence assailants in order to make themselves appear capable of killing and to back up their death threats against people.
- j. The assailant has a **history of assaultive behavior** against others.
- k. The assailant has a **history of weapons use**.
- l. The assailant has **threatened suicide** or has been acutely depressed.
- m. The assailant has an **alcohol and/or drug addiction**.

Additional Resources:

Barbara Hart, *Confronting Domestic Violence: Effective Police Response*, Pennsylvania Coalition Against Domestic Violence (Pennsylvania: 1990).

Peter M. Marzuk, Kenneth Tardiff, and Charles S. Hirsch, "The Epidemiology of Murder-Suicide," *Journal of the American Medical Association* 267 (June 1992): 3179-83.

E. P. Stuart and J. C. Campbell, "Assessing Patterns of Dangerousness with Battered Women," *Issues in Mental Health Nursing* 10 (1989): 245-60.

Materials utilized in developing sections b and c were: *Confronting Domestic Violence: Effective Police Response* and "Assessing Patterns of Dangerousness with Battered Women."

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Bureau of Justice Statistics, U.S. Department of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence*, NCJ-181867 (Washington, DC: July 2000).

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Mary Ann Dutton, *Empowering and Healing the Battered Woman* (New York: Springer Publishing, 1992).

Michael Appel, *From Emergency Shelter to Permanent Housing: The Obstacles to Safe, Decent, Affordable Housing Encountered by Battered Women*, Housing Law Reform Project (Ann Arbor: The Michigan Renters for Housing Rights, 1990).

Michigan Women's Commission, *Domestic Assault: A Report on Family Violence in Michigan* (Lansing: State of Michigan, 1977).

Michigan Women's Commission, *Domestic Assault: A Report on Family Violence in Michigan* (Lansing: State of Michigan, 1977).

Natalie White, "Batterer's Seldom Stop After the First Time. Victims are Caught in a Cycle of Violence," *Standard-Times of New Bedford* (May 21, 1995).

Natalie White, "Batterer's Seldom Stop After the First Time. Victims are Caught in a Cycle of Violence," *Standard-Times of New Bedford* (May 21, 1995).

National Institute of Justice, "Introduction" in *Domestic Violence, Stalking, and Antistalking Legislation*. Annual Report to Congress (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, March 1996).

Personal Interviews with victims, assailants, counselors and police officers. Hermina Kramp. Michigan Commission on Law Enforcement Standards, 1993. Unpublished.

Phylis Chessler, *Mothers on Trial* (Seattle, WA: Seal Press, 1986).

R. Emerson Dobash and Russell Dobash, *Violence Against Wives* (New York: The Free Press, 1979).

Susan G. S. McGee, "Why Some Battered Women Stay," from *General Information About Domestic Violence*, compiled by The Domestic Violence Project, Inc./SAFEHouse, Ann Arbor, 1992.

Web Sites of Interest:

Michigan Domestic Violence Prevention and Treatment Board

<http://www.michigan.gov/fia>

Violence Against Women Online Resources

<http://www.vaw.umn.edu/library/>

National Coalition Against Domestic Violence Web Site

<http://www.ncadv.org/>

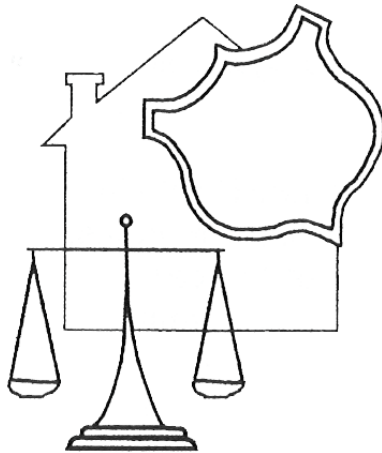
Michigan Coalition Against Domestic and Sexual Violence

<http://mcadsv.org>

2. Laws Regarding Domestic Violence

INTRODUCTION

Chapter 2 presents laws regarding domestic violence. Domestic violence encompasses a broad spectrum of substantive crimes. Law enforcement officers have a responsibility to conduct a thorough criminal investigation and make appropriate arrest decisions. In addition, this chapter provides information about Personal Protection Orders (PPOs) and foreign protection orders (FPOs) and discusses the responsibility of law enforcement officers to make an arrest when there is probable cause to believe a PPO or FPO has been violated.



A. Domestic Violence is a Law Enforcement Issue

1. Why Domestic Violence is a Law Enforcement Issue:

- a. **Domestic violence is criminal behavior.** The location of the violence (in the home, behind closed doors) and/or the relationship between the victim and assailant (married, dating) does not alter its criminal nature. Violence against another person is a crime.
- b. **Law enforcement intervention is critical to beginning the process of stopping the violence.** Law enforcement agencies have a crucial role to play in curtailing domestic violence because they are usually the first component of the criminal justice system to which a victim turns for help. Although other community systems—mental health system, health care system, educational system, human service agencies and religious groups or organizations—have an important role to play in actively opposing domestic violence, the actions of the police significantly influence how domestic violence will be viewed by the assailant, the victim, the children, and the community at large.
 - 1) Arrest is **the first step in the criminal justice process.** Arrest brings the violence into the open and treats it as a crime. By providing the victim with referrals to community and legal resources, police intervention provides support and helps the victim proceed with civil and criminal legal steps.
 - 2) Arrest **sends the message that domestic violence is criminal behavior.** Arrest demonstrates that the assailant will be held accountable for the violence; the victim's behavior is not an excuse for the violence; and violence in the home is recognized as a serious crime. Intervention that involves arrest **can decrease the likelihood of future violence** because it gives the assailant the message that there will be consequences for violent behavior. By demonstrating that domestic violence is taken seriously and will not be tolerated, officers also show everyone else involved, including the children, that violence is not the way to solve problems.

3) Arrest **provides immediate safety** to the victim, children and the community. Arrest is not what breaks up the family. The violence is.

a) Children are vulnerable to domestic violence in the home. Sometimes they are caught in the crossfire, sometimes they are the targets of the abuse, and sometimes they are the witnesses. Children are not only at risk physically, but are also emotionally at risk.

b) Domestic violence is also a workplace issue. Employers are beginning to realize the effect of domestic violence on morale, productivity and increased health care costs, and some companies have implemented programs to help their employees who are victims of domestic violence. In addition to costs to the employer, other employees may be at risk when a co-worker is the victim of domestic violence, because victims are sometimes attacked by their assailants while at work.

NOTE: IN THE WORKPLACE: Five percent of the women victimized at work were attacked by a husband, ex-husband, boyfriend, or ex-boyfriend, compared to one percent of men who were victimized by an intimate at work. (Bureau of Justice Statistics, 1996)

c) Even if a domestic violence case does not go all the way through the system to conviction, it is still a successful law enforcement intervention to have stopped the violence that was occurring at the time of the specific intervention.

c. **Domestic violence related homicides can be preventable homicides.** Arrest removes the assailant from the scene and thus prevents the immediate situation from escalating to homicide. In addition, domestic violence is not an isolated incident; it usually occurs over time and gets worse. Early intervention can interrupt the escalation before the violence reaches the point of lethality.

2. Why a Coordinated Community Response is the Most Appropriate Intervention in Domestic Violence:

- a. The **assailant is held accountable** for the violence.
- b. **Information, support and assistance are provided** to victims. Victims are given information, protection and support which can often facilitate their participation in the prosecution. Such a response requires the cooperation of various agencies—domestic violence service programs, police, prosecutors, courts, legal services, medical personnel, etc.—to develop protocols, procedures and cooperative working relationships and provide education and training.
- c. **Community systems work together** to help keep victims and children safe and to help end the violence. This type of response is intended to prevent community collusion with the assailant. Rather than accepting the assailant’s rationalization—“excuses” for battering—all community agencies that respond to domestic violence agree to focus on stopping the criminal behavior and protecting the victim and children. Assailants are arrested and prosecuted. If found guilty they receive jail terms and/or court-mandated treatment. Probation and parole departments follow up by monitoring the behavior of adjudicated assailants.

3. Why “Victim Based” Prosecutions are not Effective:

- a. Victims of domestic violence face pressure from the perpetrator, society and their own family to “drop” charges, reconcile with the perpetrator or simply work it out on their own.
- b. Relying on the victim, without more, to prove criminal charges places the victim at risk of physical harm and retaliation and often results in the dismissal of charges upon request of the victim.
- c. Criminal acts are violations of the peace and dignity of the People of the State of Michigan and, whenever possible, should be prosecuted regardless of the stated desire of the victim. Dangerous perpetrators often have tremendous control over their victims so that those who most need to be held accountable are the most difficult to convict.

4. Why “Evidence Based” Prosecution is the Most Effective Approach to Domestic Violence Prosecution:

- a. Michigan’s Court of Appeals has held that there is no distinction between “private” and “public” crimes and that the charging decision rests with the prosecutor, not the victim. (*People v. Williams*, 244 Mich. App. 249 (2001)).
- b. Every crime is made up of elements that must be proven at trial beyond a reasonable doubt by competent evidence. This does not always require the testimony of the victim. Approaching a domestic violence investigation/trial with the same perspective as a homicide allows the investigator and the prosecutor to look for ways to prove the elements of the offense without the victim.
- c. Evidence must be collected and presented in order to prove the case. Evidence can include:
 - 1) officer observations of physical injuries;
 - 2) statements of identification, MRE 801(d)(1);
 - 3) excited utterances, MRE 803(2);
 - 4) statements made for the purpose of medical treatment, MRE 803(4);
 - 5) admissions by perpetrator, MRE 801(d)(2);
 - 6) officer/witness observations of property damage and/or crime scene;
 - 7) 911 tapes (admissible as excited utterance or business record, MRE 803(6));
 - 8) medical records, MRE 803(4), (6);
 - 9) witness testimony (neighbors, children, police, or others);
 - 10) other acts of violence by perpetrator, MRE 404(b);

MRE 404(b) allows evidence of other bad acts committed by the perpetrator to be admitted at trial for certain permissible purposes. Motive, identification, plan, scheme, opportunity and lack of mistake are all legitimate purposes.

Evidence that a defendant has previously stalked, assaulted, threatened, or committed other acts of violence against this same victim or another victim, may be admitted at trial and is extremely useful evidence for the prosecution. Therefore the investigating officer should gather information about the defendant's other acts of violence against the victim or other victims, and note such information in the incident report.

This rule used to be called "similar acts" but it is now clear that the acts do not have to be similar as long as they are offered for a permissible purpose. *People v. VanderVliet* 444 Mich 52 (1993).

- 11) any other admissible evidence, whether it is direct or circumstantial.
- d. Advantages of "evidence based" prosecution.
 - 1) the burden of holding the assailant accountable is taken off the victim;
 - 2) more offenders are held accountable;
 - 3) a message is sent to judges, batterers and the community that domestic violence is a crime against society that will not be tolerated;
 - 4) fewer cases result in dismissals;
 - 5) with increased accountability for batterers and increased services offered to victims, the number of domestic homicides and self-defense killings can be reduced.

5. Elements Important to Successful Prosecution:

- a. thorough criminal investigation;
- b. arrest;
- c. complete and accurate documentation in a written report; and
- d. assistance to the victim.

6. Liability Associated with an Officer's Failure to Respond Properly to a Domestic Violence Incident:

Courts throughout the country have held the police responsible for failing to take appropriate action in response to domestic violence. It is important to note that the risk of legal liability to officers is substantially greater for *failure* to respond than it is for enforcement of the law in this area. As a result, law enforcement agencies have developed written domestic violence policies and provided training to address officer response.

Note: MCL 776.22(1) provides that each police agency in this state shall, by January 1, 1995, develop, adopt, and implement written policies for police officers responding to domestic violence calls. (Appendix K)

Additional Resources:

Bureau of Justice Statistics, *Attorney General's Task Force on Domestic Violence*, U.S. Department of Justice (Washington, DC: 1984).

Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986).

Court Cases:

Monell v. New York Department of Social Services, 436 US 658 (1978)

Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Conn 1984)

Watson v. City of Kansas City, 857 F.2d 690 (10th Cir. 1988)

Nearing v. Weaver, 295 Or. 702 (1983)

City of Canton v. Harris, 489 U.S. 378 (1989)

B. SUBSTANTIVE CRIMINAL LAW AS IT RELATES TO DOMESTIC VIOLENCE

The complete text of every Michigan statute can be found, free of charge at www.michiganlegislature.org

1. Crimes likely to be found when responding to a domestic violence call (See Table of Appendices for Selected Laws Relating to Domestic Violence):

a. Murder:

- 1) first degree (MCL 750.316; MSA 28.548) and
- 2) second-degree (MCL 750.317; MSA 28.549).

According to the Bureau of Justice Statistics, women made up 70 percent of victims who were murdered in 1992 by intimates. This percentage has risen from 54 percent in 1977. (The number of men killed by intimates fell from 1,185 to 657 while the number of female victims rose from 1,396 to 1,510.) About a third of all female murder victims over the age of 14 are killed by an intimate compared to 4 percent of male murder victims.

b. Manslaughter (MCL 750.321; MSA 28.553):

c. Domestic Assault, and domestic assault and battery.

- 1) Assault, and Assault & Battery:
 - An assault is an attempted battery or an unlawful act that places another person in reasonable fear of an imminent battery (harmful or offensive touching). The assailant's intent is to commit a battery or to make the victim fear an immediate battery.
 - A battery is a forceful, violent, or offensive touching of another person, or something closely connected with another person. The touching must be intended by the assailant (not accidental) and it must be against the will of the other person. It does not matter whether the touching caused an injury. The assailant's intention is to commit a battery or to make the victim fear an immediate battery.
 - Examples of assault and battery would be pushing, slapping, shoving or physically restraining another person. (MCL 750.81; MSA 28.276) (Appendix D-1).

NOTE: An assault may be committed even where the assailant never makes physical contact with the victim. For example, where an assailant punches the wall next to the victim's head or raises a fist near the victim's face and says, "I'll break your nose," the victim has been assaulted.

An assault or attempted battery may be committed without physical contact where the battery is interrupted. For example, if the assailant approaches the victim, making statements about harming the victim or making gestures that communicate intent to injure the victim (assailant has the ability to commit battery or appears to have the ability to commit battery) and the victim interrupts the assault by striking the assailant in self-defense, the assailant still committed the crime of assault/attempted battery.

a. Misdemeanors

1) **Domestic assault or domestic assault and battery-first offense** (MCL 750.81(2)) (Appendix D-1).

Circumstances under which an assailant should be charged with domestic assault or domestic assault & battery, which under Michigan law provides for a penalty of imprisonment for not more than 93 days or a fine of not more than \$500 or both:

- a. the assailant commits an assault or assault and battery; and
- b. the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 2) resident or former resident of the same household;
 - 3) has had a child in common; or
 - 4) current or former dating relationship

“DATING RELATIONSHIP”

means frequent, intimate associations that are primarily characterized by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

“DOMESTIC RELATIONSHIP”

There is no “statute of limitations” regarding a prior domestic relationship such as former spouse, former resident of the same household or former dating relationship.

2) Enhanced penalty for domestic assault or domestic assault and battery -- Second Offense (Appendix D-1).

Circumstances under which Michigan law provides an enhanced penalty of imprisonment for not more than one year or a fine of not more than \$1,000, or both:

- a. the assailant commits an assault or assault and battery; and
- b. the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 2) resident or former resident of the same household;
 - 3) has had a child in common; or
 - 4) current or former dating relationship; and
- c. the assailant has previously been convicted of one of the following crimes committed against a spouse or former spouse, a person with whom the assailant resides or resided together in the same household, a person with whom the assailant has

had a child in common or with whom the assailant has a current or former dating relationship:

- 1) assault or assault and battery;
- 2) a local ordinance substantially corresponding to Michigan's assault or assault and battery statute.
- 3) aggravated assault;
- 4) felonious assault;
- 5) assault with intent to commit murder;
- 6) assault with intent to do great bodily harm;
- 7) assault with intent to maim; or
- 8) a substantially similar law or local ordinance from another state.

ASK THE VICTIM: It is very important to ask the victim about the assailant's prior convictions, including convictions for violence in previous domestic relationships. Violations of local ordinances may not appear in a criminal history. In addition, it can be difficult to determine whether a prior assault or violation of a local ordinance involved a domestic relationship. It is often necessary to read the police report of the incident to make this determination. Therefore, officers need to ask the victim and note in their report, *where* and *when* regarding the assailant's prior convictions.

REMEMBER: A previous violation of a local ordinance in Michigan or a law or local ordinance in another state can be used to enhance the penalty for domestic assault, domestic assault and battery, and domestic aggravated assault under Michigan state law.

b. Felony: Enhanced penalty for assault or assault and battery – Third Offense (Appendix D-1)

Circumstances under which Michigan law provides an enhanced penalty of imprisonment for not more than two years (a felony) or a fine of not more than \$2,500, or both:

- a. the assailant commits an assault or assault and battery;
and
- b. the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 2) resident or former resident of the same household;
 - 3) has had a child in common; or
 - 4) current or former dating relationship.
- c. the assailant has previously been convicted *two or more* times of the following crimes committed against a spouse or former spouse, or a resident or former resident of the same household, a person with whom the assailant has had a child in common or a person with whom the assailant has or has had a dating relationship:
 - 1) assault or assault and battery;
 - 2) a local ordinance substantially corresponding to Michigan's assault or assault and battery statute;
 - 3) aggravated assault;
 - 4) felonious assault;
 - 5) assault with intent to commit murder;
 - 6) assault with intent to do great bodily harm;
 - 7) assault with intent to maim; or
 - 8) a substantially similar law or local ordinance from another state.

NOTES ON ENHANCED PENALTIES FOR PRIOR CONVICTIONS

The existence of a domestic relationship between the assailant and victim allows for enhanced penalties for conviction of assault or assault and battery (see B.3 and 4 in this section) or aggravated assault (see B.5) under state laws where the assailant has one or more previous domestic violence convictions.

For enhanced penalties, the prior conviction need *not* be for assaulting the same victim. All that is required is a domestic relationship between the assailant and that victim.

There is no time limit with regard to prior convictions (unlike the scheme for enhanced penalties for repeat drunk driving offenses) (See MCL 257.625; MSA 9.2325).

- 2) **Domestic Aggravated assault.** (Appendix D-2) Aggravated assault is the infliction of serious injury without a weapon and without the intent to commit murder or to inflict great bodily harm. A serious injury is a physical injury that requires immediate medical treatment or that causes impairment of health or impairment of a part of the body.

a) Misdemeanor: MCL 750.81a(1).

Circumstances under which an assailant should be charged with domestic aggravated assault, which under Michigan law provides for a penalty of imprisonment for not more than one year or a fine or both:

- a. the assailant commits an *aggravated* assault;
- b. the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 2) resident or former resident of the same household;
or
 - 3) has had a child in common; or
 - 4) current or former dating relationship.

b) Felony: MCL 750.81a(2)

Circumstances under which Michigan law provides an enhanced penalty of imprisonment for not more than two years (a felony) or a fine of not more than \$2,500, or both:

- a. the assailant commits an *aggravated* assault;
- b. the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 2) resident or former resident of the same household; or
 - 3) has had a child in common; or
 - 4) current or former dating relationship; and
- c. the assailant has previously been convicted of *one or more* of the following crimes committed against a spouse or former spouse, or a resident or former resident of the same household, a person with whom the assailant has had a child in common or a person with whom the assailant has or has had a dating relationship:
 - 1) assault or assault and battery;
 - 2) a local ordinance substantially corresponding to Michigan's assault or assault and battery statute;
 - 3) aggravated assault;
 - 4) felonious assault;
 - 5) assault with intent to commit murder;
 - 6) assault with intent to do great bodily harm;
 - 7) assault with intent to maim; or
 - 8) a substantially similar law or local ordinance from another state.

“RESIDENT OF THE SAME HOUSEHOLD”: The term is not defined in the statute. The Court of Appeals, in a case involving an alleged assault and battery by a sixteen-year-old minor against her mother in their home, held that the statute “applies to ‘domestic’ offenders broadly defined as including persons joined by ... common household residence with the victim.” The court rejected the defense argument that there had to be a “romantic involvement” between the offender and the victim, concluding that the provision applies “regardless of the victim’s relationship with the offender.” *In re Lovell*, 226 Mich. App. 84 (1997).

This interpretation supports the apparent intent of the legislature to give officers broad latitude in being able to respond to volatile situations. The purpose of including “resident of the same household” is to provide protection to people who have no other place to go.

Officers should ask the victim whether the assailant lives there, has a key, or leaves belongings there.

- d. **Assault with a Dangerous Weapon** (Felonious assault)
Felonious assault is assault with a dangerous weapon without intent to commit murder or to inflict great bodily harm. The officer should take the weapon into evidence. The weapon need not be a knife or a gun. A baseball bat, chair, vase, lamp, fireplace poker, telephone, etc. can be a weapon. (MCL 750.82).

NOTES ON INTENT:

Many crimes such as assault with intent to do great bodily harm, assault with intent to commit murder, assault with intent to commit criminal sexual conduct and assault with intent to maim require proof of a specific intent.

For example, domestic aggravated assault is a one-year misdemeanor while assault with intent to do great bodily harm is a ten-year felony. The difference between the two crimes is the assailant's intent.

An officer's documentation of the scene and gathering of statements may enable the prosecutor to prove intent at trial. To prove intent an officer should document clearly what the assailant did, how the assailant did it, and any other facts and circumstances that indicate what the assailant intended to do (e.g., to kill the victim, or to cause great bodily harm to the victim).

Officers also should ask victims the following questions to help determine the assailant's intent:

- 1) What did the assailant say during the assault? Statements made by the assailant are admissible in court and provide excellent evidence of intent.
- 2) How did the assault end? Evidence that an assault was interrupted can help to prove intent.

**Michigan Criminal Jury Instruction
(Secondary Edition) on Specific Intent:
CJI2d.3.9
Special Intent**

1) The crime of _____ requires proof of a specific intent. This means that the prosecution must prove not only that the defendant did certain acts, but that he did the acts with the intent to cause a particular result.

2) For the crime of _____ this means that the prosecution must prove that the defendant intended to *[state the required specific intent]*.

3) The defendant's intent may be proved by what he said, what he did, how he did it, or by any other facts and circumstances in evidence.

- e. **Assault with intent to do great bodily harm less than murder** (MCL 750.84).
- f. **Assault with intent to commit criminal sexual conduct** (MCL 750.520g).
- g. **Assault with intent to maim** (MCL 750.86).
- h. **Assault with intent to commit murder** (MCL 750.83) .
- i. **Assaults on Pregnant women** (MCL 750.90a-f). (Appendix D-3).
- k. **Stalking and aggravated stalking** (Stalking: MCL 750.411h) (Aggravated stalking MCL 750.411i). (Appendix D-8) See Section 2, Chapters D & E.
- l. **Communications Promoting Threatening Conduct** (MCL 750.411s) (Appendix D-8) This law became effective April 1, 2001.

This crime is committed when:

- a person “posts a message” (including; posting, sending, publishing, disseminating or otherwise communicating information) whether truthful or untruthful, *about the victim* through any means of communication (including posters, flyers, internet); and
- the person *knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact* with the victim (such as following, approaching, confronting,

appearing at the victim's workplace or residence, contacting the victim by telephone, mail or e-mail); and

- the posting of the message is *intended to cause conduct* that would make the victim feel terrorized, frightened, intimidated, threatened, harassed or molested; and
- *conduct arising from posting the message causes the victim to suffer* emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed or molested; and
- conduct arising from posting the message *would cause a reasonable person to feel* terrorized, frightened, intimidated, threatened or harassed.

A person may be prosecuted in Michigan for this crime if *one* of the following applies:

- the person posts the message while in this state; or
- conduct arising from posting the message occurs in this state; or
- the victim is present in this state at the time the offense or any element of the offense occurs; or
- the person posting the message knows that the victim resides in this state.

Although this crime is sometimes referred to as “internet stalking,” the perpetrator does not have to use a computer to communicate the message about the victim. The message about the victim can be communicated by any means, such as mailing, publishing, or distributing information on paper.

Examples of Communications Promoting Threatening Conduct:

Perpetrator distributes flyers or sends an e-mail message that provides the victim's e-mail address or phone number, and describes the victim as sexually available to anyone who contacts her. The perpetrator knows or has reason to know that posting the message could cause two or more unconsented contacts with the victim. The perpetrator intends to cause conduct that will threaten, harm, or frighten the victim. Two individuals who receive the message contact the victim by e-mail or phone.

The unconsented conduct of these two individuals causes the victim to feel terrorized or harassed, and a reasonable person would feel terrorized or harassed by the unconsented conduct of these two individuals.

NOTE: Compare stalking or aggravated stalking. In stalking or aggravated stalking, the perpetrator's unconsented contacts are *directed at the victim*. In this crime, the perpetrator's communication is *with individuals other than the victim, with the intent and result that these other individuals engage in unconsented contacts directed at the victim*.

Engaging in **Communications Promoting Threatening Conduct** is a 2 year offense. Under the following circumstances, it becomes a 5 year felony:

- The perpetrator has a **prior conviction** for this crime, or for stalking, or for using a computer to commit a crime (MCL 752.796), or for making prohibited communications through a computer (MCL 750.145d), or for violation of a substantially similar law or local ordinance of another state; or
- posting the message is in **violation of a court order**; or
- posting the message results in a **credible threat** being communicated to the victim or a member of the victim's family or household; or
- **the victim is less than 18 years old and the perpetrator is 5 or more years older** than the victim.

1. **Home invasion** (MCL 750.110a)(Appendix D-7).

The Home Invasion law was amended in October 1999 to add **assault** to the crimes committed within a dwelling in order to prove Home Invasion First or Second Degree. The amendment also modified the intent requirement so that any person who breaks and enters or enters without permission with the intent to commit a larceny, felony or assault, or who breaks and enters or enters without permission and at **any time while entering, present, or exiting** commits a larceny, felony or assault, is guilty of home invasion.

The 1999 amendment also created **Home Invasion 3rd degree**, a five year felony, where a person breaks and enters or enters a dwelling without the owner's permission in violation of a PPO or other court order, or where a person breaks and enters or enters a dwelling without the owner's permission and commits a misdemeanor (other than larceny or assault) at any time while entering, present in, or exiting the dwelling.

The rationale of *People v. Pohl*, below, would apply to the home invasion statute permitting a charge of home invasion where there was a court order prohibiting entry onto premises.

- m. **Breaking and entering** (MCL 750.110); **entering without breaking** (MCL 750.111); and **entering without owner's permission** (MCL 750.115).

In *People v. Pohl*, 202 Mich. App. 203 (1993), the court affirmed the assailant's conviction for breaking and entering an occupied dwelling with intent to commit larceny where he broke into his own home and removed personal property (some of which was his) in violation of a restraining order. Breaking into the marital home in violation of a Personal Protection Order (PPO) is a breaking and entering. In addition, the Court of Appeals concluded that the jury could have found beyond a reasonable doubt that the assailant had no good faith belief that he had a right to remove even his own property where the restraining order prohibited him from entering the home and "from removing any personal property" from the home.

- n. **Malicious destruction of real or personal property** (MCL 750.377a)

To be convicted of malicious destruction of real or personal property, the defendant must destroy or damage property belonging to someone else. The officer should document destruction of property jointly owned and let the prosecutor decide how to proceed.

Officers should look for assaults associated with malicious destruction of property. Examples:

- 1) Assault has occurred when the assailant smashes a television with a baseball bat and tells the victim, who is standing nearby, "you'll be next."
- 2) It is assault when an assailant breaks down a bathroom door while the victim is behind it.

It is important for officers to document where the victim was in relation to the assailant (how close?), what the assailant did and said, and what the victim was feeling (afraid of being hurt or killed?).

- o. **Cutting, Breaking, Tapping Telephone Wires** (MCL 750.540)

(Appendix D-12)

It is a 2 year misdemeanor to willfully and maliciously prevent, obstruct or delay, by any means, the sending of any authorized communication through any telephone line under the control of any telephone company doing business in this state.

Example: Perpetrator rips telephone cord out of the wall to prevent victim from telephoning the police.

In *People v. Hotrum*, 244 Mich App 189 (2000) the Court of Appeals determined that this statute was violated when defendant ripped the telephone cord out of the wall, preventing his wife from contacting the police after defendant's assault. Telephone service to the residence was provided by GTE, a telephone company doing business in Michigan.

p. **Weapons offenses** (MCL 750.226; MSA 28.423):

- 1) Carrying a dangerous weapon with unlawful intent. (MCL 750.226)
- 2) Carrying a concealed weapon (MCL 750.227).
- 3) Possession of a firearm at the time of commission or attempted commission of a felony (MCL 750.227b).
- 4) Careless, reckless, or negligent use of a firearm with injury or death resulting (MCL 752.861).
- 5) Reckless or wanton use of a firearm (MCL 752a.863).
- 6) Felon in possession of a firearm (MCL 750.224f).
- 7) Possession of a firearm while intoxicated (MCL 750.237).
- 8) Federal firearms offenses.

q. **Criminal sexual conduct** (MCL 750.520a-e) (Appendix D-9).

Under Michigan law, there is no exception to a charge of criminal sexual conduct based on the relationship between the assailant and the victim; an assailant may be convicted of criminal sexual conduct against a spouse, former spouse, a person with whom the assailant has had a child in common, or a person the assailant is living with or dating. (MCL 750.5201) (criminal sexual conduct against a spouse).

If the investigation reveals that there may have been forced sexual penetration or sexual contact, the officer needs to follow up. Victims may be reluctant to report forced sexual activity for a number of reasons, including embarrassment, fear of retaliation, and lack of awareness that it's a crime when the assailant is a spouse or person with whom the victim has a dating relationship.

Medical attention, including a sexual assault examination kit, may be appropriate. Officers should use sexual assault nurse examiner programs where available.

- r. **Kidnapping** (MCL 750.349).
- s. **Parental taking/retention of a child** (MCL 750.350a) (Appendix D-5).
- t. **Arson.**
- u. **Child abuse** (MCL 750.136b; MSA 28.331(2) (Appendix D-4).

Injury or assaults upon children must not be ignored.

The crime of child abuse has four degrees. First and third degree child abuse require intentionally causing injury; second degree requires recklessly causing injury or intentionally committing an act which is cruel to a child regardless of whether harm results; fourth degree requires recklessly causing physical harm to a child.

Even if a child is not injured and has not been the victim of child abuse, an assault or assault and battery may have been committed against the child. For assault or assault and battery on a child, consider the assailant's intent to injure the child or to place the child in fear of immediate harm. Also consider transferred intent, when the assailant intends to harm a partner and the child is struck during the assault on the partner.

It is not a crime for parents to "reasonably discipline a child, including the use of **reasonable** force."

- v. **Obstruction offenses** (MCL 750.122, 750.483a) (Appendix D-10)

Any person who prevents or attempts to prevent another person from reporting a crime through the unlawful use of physical force, or who retaliates or attempts to retaliate against another person for having reported or attempted to report a crime, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000 or both. However, if the violation involves committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the person is guilty of a felony punishable by imprisonment for not more than 10 years, or a fine of not more than \$20,000, or both.

This law also prohibits interference with police investigations and court proceedings.

- w. **Drug offenses.**

x. **Animal abuse** (MCL 750.50b and MCL 750.50)(Appendix D-11).

It is a misdemeanor for a law enforcement officer to fail to arrest persons who commit cruelty to animals where the officer “may have knowledge or reasonable notice” of the violation (MCL 750.52).

y. **Violation in Michigan of a protection order that is a conditional release (bond) or probation order issued by the criminal court of another state, Indian tribe, or U.S. territory.** (MCL 600. 2950m).

Effective April 1, 2002. It is a 93 day misdemeanor to violate in Michigan a protection order (prohibiting violent or threatening acts against, contact with, or physical proximity to another person) that is a conditional release (bond) or probation order issued by the criminal court of another state, Indian tribe, or U.S. territory. Most commonly, in the context of domestic violence, such an order will be a “no contact” order that has been issued by a court of another state, Indian tribe or U.S. territory in a criminal case for domestic violence.

z. **Federal Offenses**

1) Possession or transfer of firearm after misdemeanor domestic violence conviction (18 USC 922(g)(9)).**

- It is a ten year federal felony to **possess** a firearm or ammunition after a conviction for a misdemeanor domestic violence crime.
- It is a ten year federal felony to **transfer** a firearm or ammunition to a person who has been convicted of a misdemeanor domestic violence crime.
- This federal firearms prohibition **lasts for the lifetime of the person who has been convicted** of the domestic violence misdemeanor. It does not matter how long ago the misdemeanor domestic violence conviction occurred.
- For purposes of this federal law, “misdemeanor domestic violence crime” means any state or federal crime that has as an element the **use or attempted use of physical force, or threatened use of a deadly weapon** committed by the victim’s current or former spouse; victim’s parent or guardian; person with whom the victim cohabits or has cohabited as spouse, parent, or guardian; person with whom the victim has a child in common; or person similarly situated to victim’s spouse, parent or guardian.

**** On October 3, 2002 the federal Court of Appeals for the 6th Circuit ruled in the Wezgren case that the federal firearms disqualification for people convicted of misdemeanor domestic violence crimes (18 USC 922(g)) does not apply to people convicted of such crimes under Michigan law. However, if a person is convicted of a misdemeanor domestic violence crime under the laws of another state, and**

the person is in possession of a firearm in Michigan, the person could be prosecuted for a violation of 18 USC 922(g).

NOTE: Through another court decision or through a change in Michigan law, it might be determined that this federal firearm prohibition does apply to people convicted of misdemeanor domestic violence crimes under Michigan law. Watch for changes regarding this law.

2) Possession of a firearm while subject to a protection order (18 USC 922(g)(8))

It is a ten year federal felony to possess a firearm or ammunition while subject to an order that: restrains harassing, stalking or threatening one's intimate partner or the child of the intimate partner; and includes a finding that respondent represents a credible threat to the intimate partner or child, or prohibits the use or threatened use of force against the intimate partner or child; and was issued *after a hearing* of which the respondent had actual notice and the opportunity to participate. "Intimate partner" includes spouse, former spouse, person with whom respondent has a child in common, cohabitant or former cohabitant.

It is a ten year federal felony to transfer a firearm or ammunition to a person during the time the person is subject to such an order.

3) Interstate domestic violence (18 USC 2261(a))

It is a federal felony to travel across state or tribal lines:

- with the intent to injure, harass, or intimidate one's spouse or intimate partner; and
- in the course of or as a result of that travel to intentionally commit a crime of violence that causes bodily injury to the spouse or intimate partner.

It is a federal felony to:

- cause one's spouse or intimate partner to cross state or tribal lines by force, coercion or fraud; and
- in the course of or as a result of that conduct to intentionally commit a crime of violence that causes bodily injury to the spouse or intimate partner.

The penalty for these federal crimes is 5 years to life, depending upon the extent of injury.

4) Interstate violation of a protection order (18 USC 2262(a))

- It is a federal felony to travel across state or tribal lines with the intent to engage in conduct that violates a protection order that protects against credible threats of violence, repeated harassment, or bodily injury, and to subsequently engage in such conduct.
- It is a federal felony to cause one's spouse or intimate partner to cross state or tribal lines by force, coercion, or fraud, and in the course of or as a result of that conduct, to intentionally commit an act that causes injury to the spouse or intimate partner, in violation of a protection order.

The penalty for these federal crimes is 5 years to life, depending upon the extent of injury.

NOTE: Federal firearms violations should be referred to ATF and the U.S. Attorneys Office. Interstate domestic violence and interstate violations of protection orders should be referred to the FBI and the U.S. Attorney's Office.

Contact information:

U.S. Attorney's Office (Eastern District of Michigan): 313.226.9100
U.S. Attorney's Office (Western District of Michigan): 616.456.2404

ATF (Detroit Field Division): 313.259.8050
ATF (Flint Outpost): 810.766.5010
ATF (Grand Rapids Outpost): 616.456.2566

FBI (Detroit Field Office, 24 hours): 313.965.2323

2. Why it is important to charge Domestic Assault & Battery

A) Local ordinances. (MCL 117.4i) (Appendix L).

NOTE: Prosecution under *state law* for assault/battery in a domestic relationship is preferred because this ensures that fingerprints will be taken and conviction information will appear on perpetrator's criminal history. This avoids the problem of law enforcement officers and prosecutors failing to identify repeat offenders who have been convicted under 90 day local ordinances.

In some jurisdictions it has been discovered that domestic violence perpetrators have avoided prosecution as repeat offenders, even when the perpetrator has been convicted many times under local ordinances, because the conviction information did not appear on the perpetrator's criminal history.

If local ordinances are used for prosecution of first offense assault/battery in a domestic relationship, it is recommended that the penalty for assault/battery under the local ordinance be increased to 93 days so that fingerprints are taken and conviction information is reported to MSP for inclusion on perpetrator's criminal history. Michigan law permits local ordinances for assault/battery to have a 93 day penalty.

B) It is important to charge Domestic Assault or Domestic Assault & Battery when appropriate.

The maximum penalty for Assault & Battery (MCL 750.81) is 93 days. The significance of the increase in penalty to "not more than 93 days" is the requirement that the assailant be fingerprinted and the fingerprints be sent to the State Police. (See B.6 in this section and MCL 28.23. This creates a record of convictions that is important for enhanced penalties for repeat domestic violence offenses. (See B.3, 4 and 5)

This also means that police can make a warrantless arrest for any A&B, regardless of the relationship between the parties, based on probable cause.

- Police departments have “preferred arrest” policies for domestic violence cases that require that an arrest be made in most cases where there is probable cause. In an assault between parties with no domestic relationship, the officer usually has the discretion whether to make a custodial arrest or simply prepare a warrant request.
- An individual arrested for domestic assault and battery or domestic aggravated assault cannot post interim bond with the arresting law enforcement agency but must be held until arraignment or a judge or magistrate sets bond.
- An individual charged with domestic assault/battery may be eligible for a deferral or adjudication of guilt (plea under advisement), MCL 764.9a.
- Charges for domestic assault/battery or domestic aggravated assault subject the perpetrator to enhanced penalties for repeat offenders

3. Circumstances under which a law enforcement agency shall immediately fingerprint the assailant and forward the fingerprints to the state police within 72 hours of the arrest of the assailant (Appendix A):

- a. felony;
- b. misdemeanor assault or assault and battery where the relationship between the assailant and the victim is:
 - 1) spouse or former spouse;
 - 3) resident or former resident of the same household;
 - 4) has had a child in common; or
 - 5) current or former dating relationship;
- c. any other misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of \$1,000, or both;
- d. violation of a Michigan Personal Protection Order (effective October 1, 2002); and
- e. violation of foreign protective order in Michigan (effective October 1, 2002).

NOTES ON FINGERPRINTING

Fingerprinting the assailant and sending the fingerprints to the state police is important for the purpose of enhancing penalties for repeated convictions for assault and battery or aggravated assault when the perpetrator has a domestic relationship with the victim (See B.2, 3, 4 and 5 in this section.)

Fingerprints should also be taken for arrests under local ordinances, because violations of local ordinances can be used to enhance penalties for conviction of domestic assault, domestic assault and battery, and domestic aggravated assault under state law.

C. OPTIONS AVAILABLE TO THE COURT IN SENTENCING AND ADJUDICATION IN DOMESTIC VIOLENCE CASES

- 1. The court may delay proceedings and place the assailant on probation without entering a judgment of guilt (MCL 769.4a) where (Appendix I-3):**
 - a. the assailant pleads guilty to or is convicted of assault, assault and battery, or aggravated assault;
 - b. the assailant has not been convicted previously of assault, assault and battery, violation of a substantially corresponding local ordinance, or aggravated assault;
 - c. the relationship between the assailant and the victim is spouse, former spouse, residing or having resided in the same household, has had a child in common or current or former dating relationship;
 - d. the prosecutor, in consultation with the victim, consents;
 - e. the assailant has not previously used this procedure; and
 - f. the court contacts the Department of State Police to determine whether the assailant has previously:
 - 1) been convicted of assault, assault and battery, violation of a substantially corresponding local ordinance, or aggravated assault; or
 - 2) used this procedure.

NOTE ON FIRST OFFENSE: For first offense assault, assault and battery, or aggravated assault, the assailant may be eligible for a deferral under MCL 769.4a, although many prosecutors may not consent to a deferral. If the assailant is eligible, the court should place the assailant on probation and impose appropriate conditions (such as batterer's intervention services; no contact with the victim; drug or alcohol counseling; etc.). Upon completion of the terms and conditions of probation, the assailant will be discharged and the charges will be dismissed. This enables the assailant who complies with the terms of probation to avoid having any criminal record for the assault. The court should report to the Department of State Police that the assailant has been discharged and the charges dismissed for retention in a nonpublic record. An assailant is eligible for only one such "discharge and dismissal."

2. The court shall enter an adjudication of guilt if during probation the assailant:
 - a. commits an assaultive crime;
 - b. violates a court order to receive counseling; or
 - c. violates a court order to have no contact with the victim.
3. The court may enter an adjudication of guilt if the assailant violates any other term or condition of probation.

NOTE ON PROBATION: An assailant who has been placed on probation under MCL 769.4a *may* have probation revoked for violations of any term or condition and *must* have probation revoked for violating certain terms or conditions. The court then enters an adjudication of guilt and proceeds to sentencing.

4. If the assailant fulfills the terms and conditions of probation, the court shall discharge the assailant and dismiss the proceedings.
5. The Department of State Police retains a non-public record of the arrest and discharge and dismissal.

D. STALKING IN DOMESTIC VIOLENCE CASES

1. The elements of stalking (Appendix D-8):

- a. a willful course of conduct;
- b. involving repeated or continuing harassment of another individual;
- c. that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested; and
- d. that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

NOTE ON INTENT: Stalking is a *general intent* crime. This means that the perpetrator must intend to engage in the prohibited conduct. The perpetrator does not need to intend for the conduct to cause the victim to feel terrorized, frightened, intimidated, threatened, harassed or molested. If a reasonable person would have those feelings and the victim actually does have those feelings, the fact that the perpetrator did not intend to cause the victim to have those feelings is not relevant.

2. Stalking requires a “course of conduct”: a pattern of conduct composed of two or more separate noncontinuous acts, evidencing a continuity of purpose.

NOTE ON COURSE OF CONDUCT: Ask the victim about the assailant’s prior conduct to determine whether there are 2 or more acts to constitute stalking. It is not necessary that every act in the course of conduct be reported to the police.

3. **“Harassment” is conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that:**
- a. would cause a reasonable individual to suffer emotional distress; and
 - b. actually causes the victim to suffer emotional distress.
4. **“Unconsented contact” is any contact with another individual that is initiated or continued without that individual’s consent, or in disregard of that individual’s expressed desire that the conduct be avoided or discontinued, and includes, but is not limited to:**
- a. following or appearing within the sight of that individual;
 - b. approaching or confronting that individual in a public place or on private property;
 - c. appearing at the workplace or residence of that individual;
 - d. entering onto or remaining on property owned, leased, or occupied by that individual;
 - e. contacting that individual by telephone;
 - f. sending mail or electronic communications to that individual; or
 - g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

EXAMPLES

Examples of behaviors that can, when not consented to, constitute stalking:

- **bothering at work, school**
- **making phone calls—work, home, cell**
- **following**
- **sending letters, e-mail, fax**
- **threatening**
- **killing pets**
- **destroying property**
- **tampering with car**
- **leaving objects/gifts**

EVIDENCE OF LACK OF CONSENT TO CONTACT

The law does not require the victim to tell the assailant not to contact the victim in order for the contact to be “unconsented.” In court, however, the prosecutor must prove lack of consent, which can be demonstrated in a number of ways, including:

1. the victim requesting that the assailant not have contact, if it is safe to do so;
2. the police telling the assailant not to have contact with the victim; or
3. the victim obtaining a Personal Protection Order (PPO).

The victim does not have to confront the assailant for the assailant’s contact to be “unconsented.” Some kinds of contact are obviously unconsented,, e.g.; violent, threatening, damaging or degrading behaviors.

5. The “victim” is an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

DOCUMENTATION: Officers should advise victims to document in detail unconsented contact by the assailant, including what, where, when, who else (if anyone) was present, and what was the victim’s reaction. Victims should keep a list of all unconsented contacts. Also, victims should keep any letters sent by the assailant and messages left on answering machines. Voice mail messages should be preserved or witnessed by police. Officers should document such evidence in their written report.

6. **“Emotional distress” is significant mental suffering or distress that may, but does not, necessarily require medical or other professional treatment or counseling.**
7. **Immediately upon arrest of the assailant for stalking, the law enforcement agency shall fingerprint the assailant and shall forward the fingerprints to the state police within 72 hours after the arrest.**

<p>NOTE ON FINGERPRINTING: Assailants arrested for misdemeanor stalking must be fingerprinted (maximum penalty exceeds 92 days imprisonment or a fine of \$1,000, or both) (MCL 28.243; MSA 4.463). (See B.6 in this chapter.)</p>

8. **Penalty for Stalking:**
 - a. **stalking is a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$1,000, or both; except**
 - b. **where the victim is under 18 and the perpetrator is five or more years older than the victim, stalking is a felony, punishable by not more than five years or a fine of not more than \$10,000, or both.**
9. **An arrest for misdemeanor stalking can be made without a warrant based on probable cause because the maximum penalty is greater than 92 days. (MCL 764.15).**

E. AGGRAVATED STALKING IN DOMESTIC VIOLENCE CASES

- 1. An individual commits aggravated stalking (Appendix D-8) by engaging in stalking (see section D in chapter 2) where:**
 - a. the assailant has previously been convicted of stalking or aggravated stalking;
or
 - b. at least one of the 2 or more separate noncontinuous acts:
 - 1) is in violation of a restraining order and the individual has received actual notice of that restraining order, or is in violation of an injunction or preliminary injunction;
 - 2) is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal; or
 - 3) includes the making of one or more credible threats against the victim, a member of the victim's family, or another individual living in the victim's household.

DEFINITION OF AGGRAVATED STALKING

To commit aggravated stalking, the assailant must commit stalking (see section D in this chapter), which requires a "course of conduct" (2 or more acts of unconsented contact), under certain circumstances specified in the statute. Basically, aggravated stalking is *stalking*:

- ***in violation of a court order; or***
- ***which includes a credible threat; or***
- ***which is committed by an assailant with a prior conviction for stalking or aggravated stalking.***

NOTE: The prior conviction does *not* have to involve the same victim.

NOTE: Officers should ask the victim about the assailant's prior conduct.

2. Penalty for aggravated stalking.

- a. Stalking is a felony, punishable by imprisonment for not more than five years or a fine of not more than \$10,000, or both except
- b. Where the victim is under 18 years and the perpetrator is five or more years older than the victim, stalking is a felony, punishable by not more than ten years or a fine of not more than \$15,000, or both.

**COURSE OF CONDUCT REQUIRED FOR
AGGRAVATED STALKING**

The assailant must commit stalking, which requires a "course of conduct" (two or more acts of unconsented contact). If one of the acts is in violation of a PPO (domestic relationship or non-domestic stalking), the assailant has committed aggravated stalking. That is, you do not need two violations of a PPO for aggravated stalking.

For example, if the assailant engages in stalking, the victim obtains a PPO, and the assailant then commits an act of unconsented contact in violation of the PPO, the assailant has committed aggravated stalking.

MCL 750.411i clarifies this by providing that aggravated stalking is committed when "at least one of the actions constituting the offense is in violation of a restraining order. . .

Also, if the assailant has made a number of harassing telephone calls and during one of these calls the assailant makes a credible threat against the victim or a member of the victim's family or household, the assailant has committed aggravated stalking.

THE "RESTRAINING ORDER" can be a domestic relationship Personal Protection Order (PPO) (see section G in this chapter) or a non-domestic stalking PPO (see section H.).

A person does not have to obtain a PPO to be the victim of the crime of stalking. Stalking in violation of any PPO will, however, raise misdemeanor stalking to the felony of aggravated stalking.

- 3. Immediately upon arrest of the assailant for aggravated stalking, the law enforcement agency shall fingerprint the assailant and shall forward the fingerprints to the state police within 72 hours after the arrest.**

F. THE AUTHORITY OF A POLICE OFFICER IN ENFORCING DOMESTIC VIOLENCE LAWS

- 1. The authority of a police officer to enter the dwelling without a warrant when responding to a domestic violence complaint is based on:**
 - a. Consent by a person with authority to consent, including:
 - 1) adult occupants;
 - 2) child occupants, taking into account:
 - a) age; and
 - b) area of dwelling to be entered.

ASK FOR CONSENT TO ENTER: Most often entry at the scene of a domestic violence complaint is made with consent. Officers should always ask whether they may enter the premises.

NOTES ON WHO CAN GIVE CONSENT: Persons who live in the dwelling have authority to consent to entry. This includes children, although young children may only have authority to admit officers to that part of the dwelling that any caller would be allowed to enter.

The North Dakota Supreme Court concluded that a victim who “fled the marital residence, sought a protective order, and rented a new residence” because of domestic violence retained the authority to consent to a search of the marital home. *State v Huffman*, 542 N.W. 2d 718 (1996).

- b. Exigent circumstances, including:
- 1) risk of danger to police or others inside or outside the dwelling;
 - 2) imminent destruction of evidence;
 - 3) need to prevent the suspect's escape;
 - 4) hot pursuit.

NOTES: The “exigent circumstances” exception requires the officer to have probable cause to believe that a crime has been committed and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. In addition, immediate action must be necessary to:

- 1) prevent the imminent destruction of evidence; or
- 2) protect police officers or others; or
- 3) prevent the escape of a suspect.

Officers may discover evidence of domestic violence after having lawfully entered a dwelling for reasons *other* than responding to a domestic violence complaint. For example, officers may be performing a “community caretaking function” (*People v. Davis*, 442 Mich 1 (1993); *United States v. Rohrig*, 98 F.3d 1506 (1996)), such as responding to a neighbor’s complaint about loud music at night, or seeking to administer aid to a person in need of emergency assistance. Police “community caretaking” functions are varied; what they have in common is that they are not performed to investigate or solve crimes. (*People v. Davis*, 442 Mich 1 (1993)). Because the purpose of the officers in entering is not to investigate crimes, probable cause is not required for entry.

“. . . we hold that police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion. In addition, the

entry must be limited to the justification therefor, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance.”

***People v. Davis*, 442 Mich 1, 25-26 (1993)**

In ***People v. Beuschlein***, 245 Mich. App. 744 (2001), the Court of Appeals held the officers’ warrantless entry proper under both exigent circumstances and the less demanding standard of emergency aid. The officers responded to a 911 call where the caller had failed to hang up. According to the dispatcher, there was a domestic incident in progress, possibly involving guns and knives. When the officers went to the front door, they knocked and announced themselves as police officers. No one answered and the front door was locked. One or two minutes later, a woman answered the door. The officers ordered her to the ground and entered the home with their guns drawn. The cocaine that was discovered inside the home was held to be admissible.

2. The grounds that justify entry must be documented.
3. Circumstances under which a police officer may arrest (Appendix F):
 - a. a warrant exists;
 - b. a felony, misdemeanor, or ordinance violation is committed in the officer’s presence;
 - c. probable cause exists to believe:
 - 1) a felony has been committed;
 - 2) a misdemeanor punishable by imprisonment for more than 92 days has been committed (MCL 764.15); (See Appendix H for list of selected 92+ day misdemeanors)

NOTE: Because the penalty for assault and battery (non-domestic) was increased to 93 days on April 1, 2002, officers can now arrest for any A&B based on probable cause.

- 3) a misdemeanor has taken place or is taking place on school property;
- 4) a misdemeanor assault, assault and battery, or aggravated assault has been or is being committed, or a violation of a substantially corresponding local ordinance occurred or is occurring, and there is a domestic relationship, defined as where the perpetrator:
 - a) is a spouse or former spouse of the victim;
 - b) has had a child in common with the victim;
 - c) resides or has resided in the same household as the victim; or
 - d) has a current or former dating relationship with the victim. (MCL 764.15a);
- 5) the person is violating or has violated a condition of release (conditional bond) (MCL 764.15e(1));
- 6) the person has violated a condition of probation or parole (MCL 764.15(1) (g)); or
- 7) the person is violating or has violated a Michigan Personal Protection Order (PPO) or a foreign order of protection. (MCL 764.15b) (See section J in this chapter.)

NOTES ON LOCAL ORDINANCES: Now that under state law all A&Bs are 93-day misdemeanors, an officer is authorized to make a warrantless arrest based upon probable cause regardless of the relationship between the victim and the assailant. However, if the officer is making a warrantless arrest for A&B under a 90-day local ordinance there must be a domestic relationship between the victim and assailant.

Arrests and documentation should still be made for other crimes committed in a domestic violence incident. The investigation should not stop as soon as probable cause has been established for a misdemeanor crime. Multiple crimes may have been committed; all should be investigated and considered in the probable cause determination.

NOTE: Arrest authority and procedures for violation of a Personal Protection Order (PPO) or a foreign protection order are addressed in section J of this chapter. Procedures following arrest for violation of a condition of release are addressed in section N of this chapter.

G. DOMESTIC RELATIONSHIP PERSONAL PROTECTION ORDER

1. A domestic relationship Personal Protection Order (PPO) is a court order issued by the family division of circuit court prohibiting certain conduct (See Appendix C).

NOTE: Officers should know how PPOs are obtained because victims often ask officers about PPOs. However, the written notice of rights officers must provide victims (see section N in this chapter) also includes information about PPOs.

NOTE: PPOs are orders issued by the *circuit* court.

2. A violation of a PPO is contempt of court.
 - a. Violating a PPO is not a crime in and of itself; violating a PPO is contempt of court which will subject the perpetrator to:
 - 1) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and if he or she is found guilty of criminal contempt, imprisonment for not more than 93 days and a fine of not more than \$500.00.
 - 2) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in the juvenile code.
 - b. Conduct that violates a PPO may also constitute a violation of the criminal law. The penalty provided for violation of a PPO may be imposed in addition to any penalty imposed for any criminal offense arising from the same conduct (MCL 600.2950(22)).

3. Circumstances under which an individual may obtain a domestic relationship PPO.

An individual (the petitioner) may obtain a domestic relationship PPO only if there is a domestic relationship between the petitioner and the person restrained or enjoined (the respondent) defined as (MCL 600.2950):

- a. spouse or former spouse;
- b. residing or having resided in the same household;
- c. has had a child in common; or
- d. has or has had a dating relationship.

NOTE ON OBTAINING A DOMESTIC RELATIONSHIP PPO: A “domestic relationship” for obtaining a PPO includes a dating relationship, which is defined as “frequent, intimate associations primarily characterized by the expectation of affectional involvement.” The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

- **An unemancipated minor child cannot obtain a PPO against his or her parent, and a parent cannot obtain a PPO against his or her unemancipated minor child.**
- **Officers should advise victims to keep a copy of their PPO with them at all times, although this is not required for enforcement.**
- **No one can obtain a PPO against a child under the age of 10.**

4. The existence of a domestic relationship will be determined by the circuit court before the court issues the PPO.

NOTE: The existence of a domestic relationship will have been determined by the issuing judge (MCL 600.2950). The officer does not need to make this determination at the scene of an alleged violation of a PPO.

5. Conduct that can be restrained or enjoined by a domestic relationship PPO:

- a. entering onto premises;

NOTE ON PREMISES: Premises can include locations other than the petitioner's residence, i.e., the children's school or baby-sitter, the petitioner's parent's home, etc.

- b. assaulting, attacking, beating, molesting, or wounding a named individual;

NOTE: The PPO can be used to protect the petitioner's children as well as the petitioner.

- c. threatening to kill or physically injure a named individual;
- d. removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction;
- e. purchasing or possessing a firearm;
- f. interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined;
- g. interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment;
- h. having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address;
- i. stalking the petitioner;
- j. any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

NOTE ON OBTAINING A PPO: If there is a domestic relationship between the assailant and the victim, the victim should obtain a domestic relationship PPO to prohibit stalking behaviors. A non-domestic stalking PPO (see chapter 2.H) should be obtained by a victim only when the victim does not have a domestic relationship with the assailant.

NOTE ON CHILD CUSTODY WITHIN PROTECTION ORDERS: The Michigan Court of Appeals has ruled that a Michigan PPO can restrict a parent's contact with the parent's minor child(ren) and/or award temporary custody or temporary possession of children. *Brandt v. Brandt*, 250 Mich App 68 (2002). Although a child custody provision within a Michigan PPO is not common, it is legal, and it is enforceable as any other provision in the PPO. Child custody provisions within protection orders are safety provisions. Forty-four states, including the District of Columbia, specifically provide for award of temporary child custody in a protection order.

6. Actions that must be undertaken by the petitioner in order to obtain a domestic relationship PPO:

- a. go to circuit court and file a petition, on a form provided without charge by the court, requesting a domestic relationship PPO; and
- b. provide evidence in support of the request demonstrating probable cause to believe the respondent may commit one or more of the acts that can be prohibited by the PPO;. (See section G.5 in this chapter.)
- c. notify the court of the respondent's occupation prior to the issuance of the personal protection order if the respondent is:
 - 1) a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment;
 - 2) a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616;

- 3) a sheriff, a deputy sheriff or a member of the Michigan department of state police;
- 4) a local corrections officer, department of corrections employee; or
- 5) a federal law enforcement officer who carries a firearm during the normal course of his or her employment.

This requirement does not apply to a petitioner who does not know the respondent's occupation.

- d. a petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner must provide the court with a mailing address.

7. The PPO is effective when signed by the judge, even before the PPO is served. The petitioner is responsible for:

- a) having respondent served with the PPO; and
- b) providing the clerk of the court with proof of service.

<p>NOTE: PETITIONER IS NOT PERMITTED BY LAW TO SERVE THE PPO: Any adult who is not the petitioner can serve the PPO. However, often it is not safe to serve the PPO. Therefore, it is recommended that petitioner use a professional process server or the sheriff's office to serve the PPO. There may be a fee to serve the PPO. Therefore, if petitioner is low income, the petitioner should ask the court to waive the service fees.</p>
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- 8. There is no fee to obtain a PPO. There may be a fee charged by a professional process server or by the Sheriff's Department for serving the PPO. If the petitioner is low income, the petitioner may ask the court to waive the fees for service.**

NOTE ON OBTAINING A PPO: The petitioner has to convince the court that there is probable cause to believe the respondent may engage in one or more of the acts to be prohibited by the PPO.

The petitioner can do this by providing testimony, affidavits, documents (including police and medical reports) and other evidence.

The victim's documentation is very important in obtaining a PPO.

FALSE STATEMENTS: A person who knowingly and intentionally makes a false statement to the court in support of a petition for a domestic relationship PPO is subject to the contempt powers of the court (MCL 600.2950(23)).

H. STALKING (NON-DOMESTIC) PERSONAL PROTECTION ORDER

- 1. A stalking (non-domestic) Personal Protection Order (PPO) is a court order issued by the circuit court prohibiting stalking behavior (See Appendix C.)**

WHEN TO OBTAIN A NON-DOMESTIC PPO:

If there is a domestic relationship between the parties (spouse, former spouse; residing or having resided together; child in common; past or present dating relationship), the victim should obtain a domestic relationship PPO even if the assailant is stalking the victim. (See section G in this chapter.)

A non-domestic stalking PPO should be obtained only by a victim of stalking who does not have a domestic relationship with the stalker.

- 2. A violation of a PPO is contempt of court.**
 - a. Just as with the domestic relationship PPO, violating a non-domestic stalking PPO is not a crime in and of itself; violation of the PPO will subject the individual restrained or enjoined to the following:
 - 1) if the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and if he or she is found guilty of criminal contempt, imprisonment for not more than 93 days and may be fined not more than \$500.00;
 - 2) if the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in the juvenile code.
 - b. Conduct which violates a non-domestic stalking PPO may also constitute a violation of the criminal law. The penalty provided for violation of a PPO may be imposed in addition to any penalty imposed for any criminal offense arising from the same conduct (MCL 600.2950a).

3. A domestic relationship is *not* required for a non-domestic stalking PPO (MCL 600.2950a).

WHO CAN OBTAIN A NON-DOMESTIC STALKING PPO: A non-domestic stalking PPO can be obtained by *anyone* who is being stalked in order to restrain anyone who is stalking. *No* relationship, domestic or otherwise, is necessary; except: MCL 600.2950a states that a court shall not issue a PPO under the following circumstances:

- a. the petitioner is a prisoner; or
- b. the respondent is the unemancipated minor child of the petitioner, or if the petitioner is the unemancipated minor child of the respondent; or
- c. the respondent is a minor child under the age of 10 years.

NOTE: Officers should advise victims to keep a copy of their PPO with them at all times, although this is not necessary for enforcement.

4. Conduct that can be restrained or enjoined by a non-domestic stalking PPO.

Conduct that can be restrained or enjoined by a non-domestic stalking PPO includes, but is not limited to:

- a. following or appearing within the sight of an individual;
- b. approaching or confronting that individual in a public place or on private property;
- c. appearing at the workplace or residence of that individual;
- d. entering onto or remaining on property owned, leased, or occupied by that individual;
- e. contacting that individual by telephone;
- f. sending mail or electronic communications to that individual;

- g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual; or
- h. purchasing or possessing a firearm.

NOTE: A non-domestic stalking PPO can enjoin or restrain stalking conduct that is prohibited under the stalking law. A non-domestic stalking PPO is to protect a person against *stalking* behaviors. It is not appropriate for other situations, such as neighbor-neighbor disputes involving, for example, loud noise or a dog trespassing in the yard.

Officers should *not* advise a person whose problem is something other than stalking to go to circuit court and obtain a non-domestic stalking PPO. (MCL 750.411h, 750.411i; MCL 600.2950a(1)) (Appendix D-8). Other remedies, such remediation or peace bonds, may be available for non-stalking, non-domestic disputes.

5. Actions that must be undertaken by the petitioner in order to obtain a non-domestic stalking PPO :

- a. go to circuit court and file a petition, on a form provided without charge by the court, requesting a non-domestic stalking PPO;
- b. provide evidence in support of the request demonstrating that the respondent has engaged in stalking; and
- c. notify the court of the respondent's occupation prior to the issuance of the personal protection order if the respondent is:
 - 1) a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment;
 - 2) a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616;
 - 3) a sheriff, a deputy sheriff or a member of the Michigan department of state police;
 - 4) a local corrections officer, department of corrections employee; or
 - 5) a federal law enforcement officer who carries a firearm during the normal course of his or her employment.

This requirement does not apply to a petitioner who does not know the respondent's occupation.

- d. A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner must provide the court with a mailing address.

NOTE: The petitioner must convince the court that the respondent has engaged in stalking by a preponderance of the evidence.

FALSE STATEMENTS: A person who knowingly and intentionally makes a false statement to the court in support of a petition for a non-domestic stalking PPO is subject to the contempt powers of the court (MCL 600.2950a(20)).

NOTE: An assailant who engages in misdemeanor stalking (see section D in this chapter) where at least one act of unconsented contact is in violation of a PPO (domestic relationship or non-domestic stalking PPO) commits the felony of aggravated stalking (see section E).

6. The PPO is effective when signed by the judge, even before the PPO is served. The petitioner is responsible for:

- a. having the respondent served with the PPO; and
- b. providing the clerk of the court with the proof of service.
- c. there is no fee to obtain a PPO; there may be a fee charged by a professional process server or by the Sheriff's department for serving the PPO; if the petitioner is low income, petitioner may ask the court to waive the service fees.
- d. see NOTE on page 103.

I. Court Procedures Related to Personal Protection Orders

1. Duties of the circuit court regarding domestic relationship PPOs (See Appendix C.):

- a. the court must issue a domestic relationship PPO if the court determines that there is probable cause to believe the respondent may commit one or more of the acts that can be prohibited by the PPO; or
- b. the court must state immediately in writing the specific reasons for refusing to issue the PPO.

2. Duties of the circuit court regarding non-domestic stalking PPOs:

- a. the court must issue a non-domestic stalking PPO if the court determines that the respondent has engaged in stalking, or
- b. the court must state immediately in writing and on the record (if there is a hearing) the specific reasons for issuing or refusing to issue the PPO.

3. Circumstances under which a PPO shall be issued by the circuit court ex parte.

A PPO (domestic relationship or non-domestic stalking) shall be issued by the circuit court ex parte (without notice to the respondent) if it clearly appears from specific facts shown that:

- a. immediate and irreparable injury, loss or damage will result from delay required to give notice; or
- b. notice itself will precipitate adverse reaction before a PPO can be issued.

NOTE ON THE EX PARTE PPO: Ex parte PPOs are issued where the need for petitioner safety outweighs the need to provide prior notice to the respondent.

As with domestic relationship PPOs, a non-domestic stalking PPO will be issued ex parte if the court determines petitioner safety requires it.

NOTE: An ex parte non-domestic stalking PPO is valid for not less than 182 days (MCL 600.2950a (9)).

4. Circumstances under which the respondent may file a motion to modify or terminate the ex parte PPO.

The respondent may file a motion, on a form provided without charge by the circuit court, to modify or terminate an ex parte PPO (MCL 600.2950(13) and MCL 600.2950a(10)):

- a) within 14 days after being served with or receiving notice of the PPO; or
- b) for good cause shown, after 14 days.

NOTE: The respondent has the right to be heard in court. The respondent can go to the court that issued the PPO ex parte and challenge it. The court will provide the respondent with the necessary forms free of charge, and an attorney is not necessary.

5. Time period within which the circuit court must schedule a hearing on a motion to modify or terminate a PPO:

- a. 14 days after the filing of the motion; or
- b. 5 days (expedited hearing) after the filing of the motion if the PPO prohibits the purchase or possession of a firearm and the respondent is a:
 - 1) person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of employment;
 - 2) certified police officer;
 - 3) sheriff or deputy sheriff;
 - 4) member of the Michigan department of state police; or
 - 5) local corrections officer, department of corrections employee, or federal law enforcement officer who carries a firearm during the normal course of employment.

Only the court can terminate or modify a PPO. Officers at the scene of a PPO violation involving, for example, a claim by the respondent that the petitioner invited the respondent to visit the petitioner's premises despite a PPO prohibition, should arrest the respondent and let the court address the issue of modifying or terminating the PPO.

6. Responsibilities of the clerk of the circuit court that issues a PPO:

- a. file a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order to enter the PPO into the LEIN;
- b. provide the petitioner with not less than 2 true copies of the personal protection order;
- c. if the respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order;
- d. if the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in the respondent's county of residence about the existence and contents of the personal protection order;
- e. if the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order;
- f. if the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order;
- g. inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court to be immediately entered into the law enforcement information network; and
- h. notify the law enforcement agency that received the personal protection order if either of the following occurs:

- 1) the clerk of the court has received proof that the individual restrained or enjoined has been served, or
- 2) the personal protection order is rescinded, modified, or extended by court order.

7. Responsibilities of the petitioner:

- a. ensure that the respondent is served with the PPO;
- b. ensure that proof of service is provided to the clerk of the circuit court that issued the PPO; and
- c. notify the court of the respondent's occupation prior to the issuance of the personal protection order if the respondent is:
 - 1) a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment;
 - 2) a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616;
 - 3) a sheriff, a deputy sheriff or a member of the Michigan department of state police;
 - 4) a local corrections officer, department of corrections employee, or
 - 5) a federal law enforcement officer who carries a firearm during the normal course of his or her employment.

This requirement does not apply to a petitioner who does not know the respondent's occupation.

8. Extension of a PPO:

- a. petitioner may file an ex parte motion to extend the PPO, without a hearing, by requesting a new expiration date.
- b. the motion must be filed with the court that issued the PPO no later than three days before the PPO is to expire.
- c. the court must act on the motion within three days after it is filed.
- d. failure to timely file a motion to extend the PPO does not preclude petitioner from filing a new PPO action regarding the same respondent.
- e. if the expiration date is extended, an amended PPO must be entered.
- f. the clerk of the court must immediately notify the LEIN entering agency of the extension.

- g. the amended/extended PPO must be served on the respondent.
- h. there are no motion fees for extending a PPO. A fee for serving the PPO may be charged by a professional process server or the Sheriff's department. If the petitioner is low income, the petitioner may ask the court to waive the service fees.

REMEMBER: A respondent who engages in misdemeanor stalking (see section D in this chapter) where at least one act of unconsented contact is in violation of a PPO (domestic relationship or non-domestic stalking PPO) commits the felony of aggravated stalking (see section E).

J. ENFORCEMENT OF MICHIGAN PERSONAL PROTECTION ORDERS

1. A Personal Protection Order (PPO) is effective when signed by a judge.

PURPOSE OF THE EX PARTE PPO: The ex parte PPO is meant to provide immediate safety. The PPO becomes effective when signed by a judge, even though the person enjoined or restrained has not yet been served and the PPO has not yet been entered into the LEIN (MCL 600.2950(8),(17) and MCL 600.2950a(5),(14)).(See Appendix C.)

2. A PPO is immediately enforceable anywhere in Michigan by any law enforcement agency that has:
 - a. received a true copy of the PPO;
 - b. been shown a copy of the PPO; or
 - c. verified the existence of the PPO in the LEIN.
3. A PPO is enforceable outside of Michigan or on Tribal land after it has been served.
4. If the individual restrained or enjoined has been served, a police officer should arrest if probable cause exists to believe:

NOTE ON VERIFICATION: Service of the PPO can be verified through the LEIN or by seeing proof of service (the petitioner might have this).

- a. a domestic relationship PPO or non-domestic stalking PPO exists; and
- b. the PPO states on its face that violation subjects the violator to immediate arrest and criminal contempt punishable by not more than 93 days and/or a fine of not more than \$500; and

- c. the individual is violating or has violated the PPO by engaging in or having engaged in the conduct restrained or enjoined by the PPO (MCL 764.15b(1)).(Appendix F).

All PPOs do not contain the same prohibitions. Officers need to read the PPO (or be informed of its contents by, for example, the law enforcement agency that has it) to determine the specific conduct restrained or enjoined.

NOTE: the petitioner cannot give “permission” to violate a PPO, for example, by inviting the respondent onto the premises after the order was issued.

CONSIDER: What happens if “A” obtains an ex parte PPO restraining “B” from entering onto the premises occupied by “A” and then “A” invites “B,” who has been served with the PPO, onto those premises? Is there a PPO violation when “B” enters onto the premises? By whom?

- (a) A PPO is a court order. Only the court can change its order.**
- (b) “A” cannot change the court’s order.**
- (c) “B” has violated the court’s order.**
- (d) Consider the liability that might result from failure to arrest “B” for a clear violation of a PPO.**
- (e) Arrest allows the *court* to address the issue of whether or not the PPO is necessary.**
- (f) The respondent has the opportunity to seek modification or termination of the PPO by filing a motion in the circuit court within 14 days of receiving notice of the PPO. (See section I in this chapter.)**

(g) The respondent may have good cause to file such a motion even if 14 days have passed if the petitioner is inviting the respondent to the premises in violation of the order. The court should determine the need to continue the order.

A petitioner can not violate the PPO. The PPO prohibits conduct by the respondent. Only the respondent can violate the PPO. Enforce the PPO against the respondent, even if respondent claims that petitioner “invited” respondent to violate the PPO. NEVER ARREST THE PETITIONER FOR THE RESPONDENT’S PPO VIOLATION. See State v. Lucas, 100 Ohio St. 3d 1 (2003). The Ohio Supreme Court ruled that a petitioner cannot be held in contempt for aiding and abetting a violation of an order that protects petitioner.

NOTE: There is no requirement that the PPO violation occur in the officer’s presence. The officer may arrest with “reasonable cause to believe” (MCL 764.15b(1)).

NOTE: There is no time limit on the officer’s authority to arrest for violation of a PPO.

WHAT IF THE VIOLATOR HAS LEFT THE SCENE?

- (a) Warrantless arrest authority under MCLA 764.15b does not “expire”.
- (b) In determining authority for warrantless arrest, the officer should consider:
- Passage of time.
 - The violator’s travel outside the officer’s jurisdiction. An officer may rely on receipt of positive information from another police officer by radio, telephone, etc. to provide the officer probable cause to believe a PPO has been violated by an individual. MCL 764.15(b)(1).
- (c) Suggestions for law enforcement officers:
- Consider passage of time and danger (do a lethality assessment; see section H in chapter 1 and section K in chapter 3).
 - Look for the PPO violator and arrest.
 - Consider a *crime* for which a criminal warrant can be obtained (Note: A criminal warrant cannot be obtained for the PPO violation itself).
 - Always consider making an arrest or obtaining a warrant for *stalking*. Repeated violations of a PPO likely will constitute the crime of stalking. Also, stalking in violation of a PPO is a felony, aggravated stalking. (See section E in this chapter.)
 - Last resort: If no crime has been committed along with the PPO violation, the petitioner can be advised to file a motion to show cause and ask the court to issue an order to show cause or a bench warrant for the violator.

(d) Problems with requiring the petitioner to seek a show cause hearing:

- Delay/danger for petitioner;
- Cost for petitioner;
- Confusion for petitioner.

NOTE: Some circuit court judges will order the respondent to show cause on their own motion and some Prosecutor's offices will file a motion to show cause. Officers should be aware of the policy in their jurisdiction so they can accurately advise petitioners.

5. Duties of the law enforcement agency or officer responding to a call alleging a violation of a PPO if the individual restrained or enjoined has *not* been served:

- a. serve the individual restrained or enjoined with a true copy of the PPO;
or
- b. provide the individual restrained or enjoined actual notice of the:
 - 1) existence of the PPO;
 - 2) specific conduct restrained or enjoined;
 - 3) penalties for violating the PPO; and
 - 4) location where the individual restrained or enjoined may obtain a copy of the order;

NOTE: The statute requires the officer to give the individual who has not been served notice of the PPO. The officer may detain the individual at the scene to do this.

- c. immediately notify the LEIN entering agency that the PPO has been served or that oral notice of the PPO has been given to respondent;
- d. complete proof of service or proof of notification form and provide a copy to:
 - 1) the law enforcement agency that entered the PPO into the LEIN;
 - 2) the circuit court that issued the PPO; and
 - 3) it is also good practice to provide the petitioner with a copy of the proof of service or proof of notification.

Law enforcement officers and court clerks can give verbal notice at any time. Verbal notice must include: 1) the existence of the PPO; 2) the specific conduct restrained or enjoined; 3) the penalties for violating the PPO; and 4) the location where the individual restrained or enjoined may obtain a copy of the order.

NOTE: The officer can always serve the person restrained a true copy of the PPO and the LEIN entry can be changed after service at any time, under any circumstances.

- 6. After being served or provided notice of the PPO at the scene, the individual restrained or enjoined shall be given an opportunity to comply with the PPO before the law enforcement officer makes a custodial arrest for violation of the PPO.

IF THE RESPONDENT COMPLIES, no arrest is made, but the officer must:

- (1) prepare a written report, on the standard domestic relationship report form or an agency substantially similar form, documenting all the facts of the investigation (including that the respondent was given notice of the PPO) (see M.4 in this chapter);**
- (2) immediately notify the LEIN entering agency that the respondent has been served or given notice of the PPO;**
- (3) prepare a proof of service or proof of notice; and**
- (4) provide a copy of the proof of service or proof of notice to:**
 - (a) the law enforcement agency that entered the PPO into the LEIN; and**
 - (b) the circuit court that issued the PPO;**
 - (c) it is also good practice to provide petitioner with a copy of the proof of service or proof of notification**

- 7. Failure to immediately comply with the PPO shall be grounds for an immediate custodial arrest.**

If an arrest is made, the officer must do 1, 2, 3 and 4 in paragraph #6 above. In addition, the written report should document that the respondent was given notice of the PPO and an opportunity to comply, and that the respondent failed to comply.

NOTE: Effective October 1, 2002, officers are required to use the standard domestic relationship incident report form or a substantially similar form after investigating or intervening in a domestic violence incident. MCL 764.15c(2). See Appendix G.

Immediately upon arrest of a person for a PPO violation or a violation of a “foreign” (non-Michigan) protective order in Michigan, the arresting law enforcement agency must take the person’s fingerprints and forward the prints to MSP within 72 hours. MCL 28.243(1)

8. In the presence of conflicting orders (i.e., a PPO prohibiting contact and a parenting time order establishing parenting time with minor children) officers must enforce a valid PPO if they have probable cause to believe it has been violated.

NOTE: Michigan Court Rule has established that a PPO takes precedence over any existing custody or parenting time order. Officers should enforce the PPO and let the court resolve any conflicts with other orders MCR 3.706(C)(3).

9. Officers should conduct a thorough criminal investigation whenever there is an alleged violation of a PPO.
10. Arrest and documentation should be made for a violation of any criminal law even when the respondent is also arrested for violation of a PPO.

OTHER CRIMES: When responding to a call alleging a violation of a PPO, officers must conduct a thorough investigation to determine what crimes might also have been committed by the respondent. Crimes far more serious than violation of a PPO may have been committed.

A person who violates a PPO can be arrested and prosecuted for the PPO violation *and* any crimes the person committed (MCL 600.2950(22); MCL 600.2950a(19)).

11. The procedures following an arrest for violation of a PPO include:

- a. the individual arrested shall be brought before the circuit court in the county where the violation occurred within 24 hours to answer to a charge of contempt for violation of the PPO (MCL 764.15b(2));

NOTE: An individual arrested for violation of a PPO will not be released on bond before the individual is brought before the court.

- b. the circuit court for each county of this state has jurisdiction to conduct contempt proceedings based upon a violation of a PPO issued by the circuit court of any county of this state;
- c. if a circuit court judge is not available within 24 hours after arrest, the individual shall be brought before the district court within 24 hours and the district court will set bond and order the individual to appear before the circuit court; and
- d. The court of arraignment shall notify the circuit court that issued the PPO that the issuing court may request that the individual be returned to that county at the expense of the requesting county for a hearing on the PPO violation.
- e. Following respondent's appearance or arraignment, the court shall set the PPO violation for hearing within 72 hours after arrest, unless extended by the court on the motion of the respondent or prosecutor.

- f. The prosecutor shall prosecute criminal contempt proceedings for PPO violations initiated by arrest or by show cause unless the petitioner retains an attorney or the prosecutor determines that the PPO was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation.
12. A written report documenting all facts of the investigation is required even if no arrest is made (See section M.4 in this chapter.)

NOTE: Effective April 1, 2002, the sentence for a PPO violation can include reimbursement to the state or local government for enforcement expenses, including salaries or wages (including overtime) for law enforcement and prosecutors.

NOTE: Effective October 1, 2002, officers are required to use the standard domestic relationship incident report form or a substantially similar form. See Appendix G.

K. ENFORCEMENT OF “FOREIGN” PROTECTION ORDERS IN MICHIGAN

NOTE: A “foreign” protection order is an injunction or other protective order issued by a court of another state, Indian tribe or US territory, NOT another country.

1. Purposes of the Federal Violence Against Women Act (VAWA) Full Faith & Credit Provisions are to:

- a. provide safety across state borders to victims;
- b. recognize and reduce the danger when abusers pursue victims across state and tribal lines; and
- c. ensure that victims are entitled to safety and enforcement of protection orders wherever they travel, reside or work.

2. VAWA Full Faith & Credit Requirements

- a. All states, Indian tribes and US territories shall recognize and enforce the valid protection orders of other states, Indian tribes and US territories, as if the orders were the orders of the enforcing state, Indian tribe or US territory.
- b. In Michigan, courts must enforce the orders of other states, Indian tribes and US territories as if the orders were issued in Michigan (state courts).

3. Face Validity: Enforcement of the FPO if the law enforcement officer is shown a copy of the order:

- a. Law enforcement officers may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the officer from any source, if the order appears to contain all of the following:
 - 1) the names of the parties;
 - 2) the date the protection order was issued, which is prior to the date when enforcement is sought;
 - 3) terms and conditions against respondent;
 - 4) name of issuing court;
 - 5) signature of or on behalf of judicial officer; and
 - 6) no obvious indication that the order is not valid, such as an expiration date which is prior to the date enforcement is sought.
- b. The fact that a foreign protection order that an officer has been shown can not be verified in LEIN or NCIC is not grounds for an officer to refuse to enforce the order, unless it is apparent to the officer that the order is invalid.
- c. The officer may rely only on the statement of the petitioner that the order shown to the officer remains in effect.
- d. The officer may rely only on the statement of the petitioner or respondent that respondent has received notice of the order.

4. Enforcement if petitioner does not have a copy of the order:

- a. If a person seeking enforcement of a foreign protection order does not have a copy of the order, the officer shall attempt to verify through:
 - LEIN;
 - NCIC;
 - Administrative message;
 - Contacting the court that issued the order;
 - Contacting law enforcement in the issuing jurisdiction;
 - Contacting the issuing jurisdiction's protection order registry; or
 - Any other method the officer believes to be reliable.
- b. Officers should enforce the order if, through these sources, they can verify that the order contains all of the following:
 - 1) the names of the parties;
 - 2) the date the protection order was issued, which is prior to the date when enforcement is sought;
 - 3) terms and conditions against respondent;
 - 4) name of issuing court;
 - 5) signature of or on behalf of judicial officer, and
 - 6) no obvious indications that the order is not valid, such as an expiration date which is prior to the date enforcement is sought.

MUTUAL ORDERS

If the order is a “mutual” order which restrains both the petitioner and the respondent and the parties have a domestic relationship:

- a. enforce the order against the respondent;**
- b. do not enforce the order against the petitioner unless:**
 - 1) the order includes specific findings against the petitioner; and**
 - 2) it is clear from the order that respondent filed a cross or counter petition.**

5. Law enforcement responsibilities when enforcing foreign protection orders include:

- a.** Upon arrest, officers must take violator’s fingerprints and forward prints to the Michigan State Police within 72 hours of arrest.
- b.** MSP must maintain findings of criminal contempt for violations of PPOs and for violations of foreign protection orders in Michigan in respondent’s criminal history.
- c.** A person who refuses to allow or resists taking fingerprints is guilty of a misdemeanor punishable by imprisonment for not more than 90 days and/or \$500. (Appendix A-2).
- d.** Law enforcement officers must complete the standard domestic relationship incident report form, or a substantially similar form, when investigating allegations a foreign protection order violation.
- e.** Law enforcement officers and courts must follow Michigan’s PPO enforcement procedures for violations of foreign protection orders in Michigan.

- f. Michigan PPO penalties, including reimbursement for enforcement expenses, apply to violations of foreign protection orders in Michigan.

6. Good Faith Immunity for Law Enforcement

- a. Law enforcement officers, prosecutors, or court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order.
- b. This immunity does not in any manner limit or imply absence of immunity in other circumstances.

NOTE ON NEW MISDEMEANOR OFFENSE: A person who violates a foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$500, or both. (MCL 600.2950m). See Appendix C.

NOTE ON VIOLATIONS OF STATE OR FEDERAL CRIMINAL LAWS:

When enforcing a foreign protection order, the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties imposed for a violation of the foreign protection order may be imposed in addition to any penalty that may be imposed for any criminal offense arising from the same conduct.

Officers should be particularly alert for violations of federal criminal law, such as interstate domestic violence and interstate violations of a protection order, when investigating foreign protection order violations. See Section 2.B.1.z.

L. PERSONAL PROTECTION ORDERS AND THE PURCHASE OR POSSESSION OF A FIREARM

1. A PPO (domestic relationship or non-domestic stalking) may prohibit an individual from purchasing or possessing a firearm.

REMEMBER: Not all PPOs contain the same prohibitions. Officers need to read the PPO to determine what conduct is prohibited. Not all PPOs prohibit the purchase or possession of a firearm.

The prohibition lasts only as long as the PPO is in effect; it is not a lifetime prohibition. (MCL 600.2950(1)(e); MCL 600.2950a(22)).

2. Actions that the officer should take if an individual who has been served with a PPO that prohibits purchasing or possessing a firearm is in possession of a firearm:
 - a. arrest the individual; and
 - b. seize firearms as evidence, including all firearms:
 - 1) in the possession of the individual;
 - 2) in plain view; and
 - 3) found during a valid search.

NOTES ON CONSENT

If the petitioner lives in the house with the respondent, the petitioner can consent to a search of the house.

The North Dakota Supreme Court concluded that a petitioner who “fled the marital home, sought a protective order, and rented a new residence” because of domestic violence retained the authority to consent to a search of the marital home. *State v Huffman*, 542 N.W. 2d 718 (1996).

NOTES ON SEARCH WARRANTS: Officers cannot obtain a search warrant to look for firearms possessed in violation of a PPO, because violation of a PPO is not a crime. However, the circuit court that issued the PPO could issue an order authorizing officers to enter the premises and seize firearms purchased or possessed in violation of the PPO.

NOTE: A condition of the assailant’s release on bond could be that the assailant must turn over all firearms in the assailant’s possession. At arraignment, the court could be asked to impose such a condition (no possession of firearms) and to enter an order authorizing officers to enter the assailant’s home to remove any firearms.

- 3. Responsibility of the officer when an individual prohibited by a PPO from purchasing or possessing a firearm has not been served and, after being served or provided notice of the PPO, chooses to comply.**

When an individual prohibited by a PPO from purchasing or possessing a firearm has not been served and, after being served or provided notice of the PPO, chooses to comply, the officer may take possession of the firearm for safe keeping.

NOTE: Check department policy for guidance about what to do with guns taken at the scene. Procedures and policies should be developed for seizing, storage, return and/or destruction of weapons found at the scene or upon issuance of a PPO. Some judges may require the respondent to turn over guns upon issuance of a PPO.

- 4. If an individual is prohibited by a PPO from purchasing or possessing a firearm, there are no exceptions, including:**
- a. police officers, and
 - b. persons with a concealed weapon permit.
- 5. An individual prohibited by an ex parte PPO from purchasing or possessing a firearm may file a motion to modify or terminate the PPO and request a hearing.**

6. The circuit court shall schedule a hearing on a motion to modify or terminate a PPO within:

- a. 14 days after the filing of the motion; or
- b. 5 days (expedited hearing) after the filing of the motion if the PPO prohibits the purchase or possession of a firearm and the respondent is a:
 - 1) person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of employment;
 - 2) certified police officer;
 - 3) sheriff or deputy sheriff;
 - 4) member of the Michigan department of state police; or
 - 5) local corrections officer, Department of Corrections employee, or federal law enforcement officer who carries a firearm during the normal course of employment.

7. Upon service of *any* PPO (domestic relationship or non-domestic stalking, with or without a prohibition on the purchase or possession of a firearm), the Department of State Police must mail a letter to the individual restrained or enjoined stating that:

<p>NOTE: In order to ensure victim safety and to prevent a situation where a respondent learns about a PPO by way of the MSP “gun letter” before being served, the letter is now mailed only after MSP receives notice that the respondent has been served.</p>
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- a. a PPO was entered into the LEIN on a certain date;
- b. the individual *cannot* obtain a license to *purchase* a *pistol* or obtain a *concealed weapon license* until the PPO is removed from the LEIN; and
- c. the individual may request that the state police correct or expunge inaccurate information entered into the LEIN (MCL 28.422b) (Appendix B)

**NOTES ON PROHIBITION AGAINST PURCHASING
A PISTOL OR OBTAINING A CONCEALED
WEAPON LICENSE:**

Any PPO (not just a PPO with a specific prohibition against purchasing or possessing a firearm) entered into the LEIN causes the letter to be sent by the state police after the PPO has been served.

This prohibition lasts only as long as the PPO is in effect.

This prohibition does not affect all firearms; only the purchase of a *pistol*.

This prohibition does *not* affect a police officer's job; an officer does not need a concealed weapon license to carry a service weapon.

This prohibition is also not retroactive. The individual can continue to possess any firearms the individual already has; existing concealed weapon licenses are not automatically revoked.

Again, compare the situation of an individual against whom a PPO with a specific prohibition against the purchase or possession of a firearm has been issued: this *does* apply to firearms already owned, and this *does* affect a police officer's job.

FIREARMS PROHIBITION: COURT LIMITATION ON FIREARMS PROHIBITION: EFFECT OF STATE AND FEDERAL LAW

The court might issue a PPO with a limitation on the firearms prohibition. For example, the court might prohibit possession of firearms in the respondent's home, but permit the respondent to keep a hunting rifle at a specified cabin, or permit a law enforcement officer to carry a service weapon while working. Regardless of the court's decision in the PPO regarding firearms, however, state and federal firearms laws apply.

Under *state* law, regardless of the court's decision regarding firearms, a PPO respondent cannot obtain a concealed weapons permit, or a license to purchase a pistol, while the PPO is in effect. See MCL 28.425b(7)(d); MCL 28.422(3)(a). In the above example, the court's permission for respondent to keep a hunting rifle at a cabin, or for a law enforcement respondent to carry a service weapon while on duty, does not violate these *state* firearms laws.

Now consider *federal* firearms laws. Federal law prohibits possession of a firearm by a person who is subject to a protection order that specifically prohibits the use or attempted use of force against an intimate partner, or child of an intimate partner, if the protection order was issued after a hearing. See 18 USC 922(g)(8). This federal firearms prohibition, however, does not apply to law enforcement officers' possession of a duty weapon during working hours. In the above example, then, if the PPO fits the federal description (i.e., the protection order specifically prohibits the use of force or attempted use of force against an intimate partner or child of an intimate partner, and the order was issued after a hearing) federal law prohibits the respondent from possessing a firearm, regardless of whether the PPO itself prohibits firearm possession. A judge cannot override this federal law and permit the respondent to possess a firearm, in violation of federal law, under any circumstances.

In the above example, if the PPO fits the federal description, it would be a violation of federal law for the respondent to possess a hunting rifle at the respondent's cabin, regardless of the court's permission in the PPO to do so. If the PPO fits the federal description, it is *not* a violation of this federal law for a law enforcement officer respondent to possess a service weapon during working hours, if the PPO specifically permits this, or if the PPO does not contain any firearms prohibition.

I. IF THE PPO SPECIFICALLY PROHIBITS POSSESSION OF FIREARMS:

- Any and all respondents cannot purchase or possess any type of firearm;
- The prohibition applies to law enforcement officers;
- State law firearms prohibitions apply, i.e., respondent is prohibited from obtaining a CCW permit or a pistol purchase permit (MCL 28.425b(7)(d); MCL 28.422(3)(a));
- Federal firearms prohibitions apply (18 USC 922(g)(8)).

Note: The concealed weapons licensing board will be notified that a PPO prohibiting firearms has been issued. MCL 600.2950(15)(d), MCL 600.2950a(12)(d). A concealed weapons licensing board may suspend an existing concealed weapons permit, because the respondent is no longer eligible to obtain a concealed weapons permit. MCL 28.428(1). No automatic suspension or revocation of the concealed weapons permit occurs, however.

Regardless of the existence of the concealed weapons license or pistol purchase license, the respondent is prohibited by the PPO from possessing or purchasing any firearm.

II. IF THE PPO DOES NOT SPECIFICALLY PROHIBIT POSSESSION OF FIREARMS:

State Law:

- Respondent is disqualified from obtaining a concealed weapons permit or pistol purchase permit
- Respondent may possess hunting rifles;
- A law enforcement officer may carry a weapon during working hours;

These state laws do not prohibit a respondent from possessing concealed weapons if the respondent has a concealed weapons permit, or from keeping the concealed weapons permit. The concealed weapons licensing board *will not* be notified that a PPO has been issued because the PPO does not contain a provision prohibiting possession of firearms. Because respondent is now disqualified from *obtaining* a concealed weapons permit, the concealed weapons licensing board *may* suspend respondent's existing concealed weapons permit. MCL 28.428(1). No automatic suspension or revocation of a concealed weapons permit or a license to purchase a pistol occurs, however.

Federal Law:

- Federal law prohibits respondent from possessing a firearm, and prohibits any person from transferring a firearm to respondent, if respondent is subject to a protection order that specifically prohibits the use or attempted use of force against an intimate partner, or child of intimate partner and if the protection order was issued *after a hearing* for which respondent had actual notice and an opportunity to be heard. See 18 USC 922(g)(8).

The federal definition of intimate partner does not include dating or former dating partners unless they cohabitate “as spouses.”

- Does not apply to the “official use” of firearms by government employees, including law enforcement officers.

The “official use” exemption can be found at 18 USC 925(a)(1).

Effect of PPOs and Domestic Violence Misdemeanor Convictions On Gun Purchases and Possession		
	Effect on Gun Purchase and Possession	Effect on Police Officer’s Job
All PPOs	Restrained party cannot obtain: •License to purchase a pistol •Concealed weapon license	<i>Does not</i> affect police officer’s ability to carry a gun on the job
Some PPOs	PPO specifically states that restrained party cannot purchase or possess a firearm	<i>Does</i> affect police officer’s ability to carry a gun on the job
Domestic Violence Misdemeanor Convictions 18 USC 922 (g)(9) *	Under federal law, a convicted defendant cannot possess a firearm*	<i>May</i> affect police officer’s ability to carry a gun on the job
PPO Issued after a Hearing 18 USC 922 (g)(8).	The respondent may not possess a firearm under Federal law.	Does <u>not</u> affect officer’s ability to carry a gun on the job.

* **US V WEGRZYN, 305 F.3RD 593 (2002).** ON OCT 3, 2002, THE FEDERAL COURT OF APPEALS FOR THE 6TH CIRCUIT RULED THAT THE FEDERAL FIREARM DISQUALIFICATION FOR PEOPLE CONVICTED OF MISDEMEANOR DOMESTIC VIOLENCE CRIMES (18 USC 922(G)) DOES NOT APPLY TO PEOPLE CONVICTED OF SUCH CRIMES UNDER **MICHIGAN LAW**.

HOWEVER, IF A PERSON IS CONVICTED OF A MISDEMEANOR DOMESTIC VIOLENCE CRIME UNDER THE LAWS OF ANOTHER STATE, AND THE PERSON IS IN POSSESSION OF A FIREARM IN MICHIGAN, THE PERSON COULD BE PROSECUTED FOR A VIOLATION OF 18 USC 922(G).

THROUGH ANOTHER COURT DECISION OR THROUGH A CHANGE IN MICHIGAN LAW, IT MIGHT BE DETERMINED THAT THIS FEDERAL FIREARMS PROHIBITION DOES APPLY TO PEOPLE CONVICTED OF MISDEMEANOR DOMESTIC VIOLENCE CRIMES UNDER MICHIGAN LAW. OFFICERS SHOULD WATCH FOR ANY CHANGES REGARDING THIS LAW.

M. THE ARREST DECISION IN DOMESTIC VIOLENCE CASES

1. The responding officer should arrest where there is probable cause to believe that a crime outlined in Section B has been or is being committed. (Appendix F)
 - a. **The Michigan standard for probable cause (reasonable cause) requires:** only those facts and circumstances sufficient to cause a fair-minded person of average intelligence to believe that the suspected person has committed or is committing a crime.

NOTE: Under Michigan law reasonable cause and probable cause are the same standard.

- b. **The probable cause determination does *not* require:**
 1. that it is more probable than not that a crime has been committed;

NOTE ON PROBABLE CAUSE DETERMINATION: Probable cause *does not require* the officer to determine that the crime occurred beyond a reasonable doubt, *nor* does it require that the officer determine that the possibility of crime is supported by a preponderance of the evidence.

The probable cause standard is the same in domestic violence cases as in any other case. The fact of an intimate relationship between the assailant and victim does *not* raise the probable cause standard.

2. corroborating physical evidence (although the presence of physical evidence bolsters the existence of probable cause); or

NOTE: Actual physical contact between the assailant and victim need not have taken place for an assault to have occurred. As with general assault, domestic assault can occur even in the absence of physical contact. (Physical contact would make the assault a battery.) The assailant's threat, coupled with present ability to carry out the threat, is enough to constitute assault.

NOTE: The word of the victim alone, if believed by the officer, is enough to constitute probable cause.

3. that the victim agrees to the arrest. In fact, the officer should arrest where probable cause exists, even if the victim denies being assaulted.

c. To establish probable cause the officer should consider factors such as:

- 1) statements by the victim, assailant, children or other witnesses;
- 2) the dispatcher's information;
- 3) physical evidence that a crime occurred;
- 4) aggressive or threatening behavior by the assailant;
- 5) information gathered by investigating wounds to determine:
 1. offensive wounds, and
 2. defensive wounds;

NOTE: Officers need to distinguish between offensive and defensive wounds. The difference between the two is not always obvious. For example, a bite mark on the inner, upper arm of the assailant may have been obtained while the assailant had the victim in a choke-hold from behind—arm around the neck of the victim. The victim may have bitten the assailant in order to get away.

- 6) property in the house damaged or broken;

- 7) brandishing of weapons; and
- 8) the existence of a Personal Protection Order (PPO).

NOTE: The above are factors to *consider*, not a list of factors that are required to establish probable cause.

NOTE: The officer should conduct a thorough criminal investigation at a domestic violence scene to determine probable cause.

NOTE: The investigation, evidence gathering and documentation are crucial to successful prosecution.

- d. In determining probable cause the officer should *not* consider the following factors:

- 1) the lack of a PPO;

NOTE: The existence of a PPO is to be considered in establishing probable cause. It shows a history of domestic violence, that the circuit court found reason to believe that the assailant would engage in behaviors prohibited in the PPO, etc. However, the lack of a PPO is not to be considered.

- 2) the fact that no arrests were made previously;
- 3) the victim's unwillingness to prosecute;
- 4) the officer's belief that there will be no prosecution;
- 5) verbal assurances by either party that the violence will stop;
- 6) the possibility of reprisals against the victim;
- 7) the race, ethnicity, sexual preference, social class and/or occupation of the victim or the assailant;
- 8) threats by the assailant to sue the police; or

- 9) negative consequences to the assailant's status in the community.

e. **A finding of probable cause is not precluded by:**

- 1) denial by either party that violence occurred; or

NOTE: See Chapter I, Section E to review the reasons a victim of domestic violence would deny that violence occurred.

- 2) a lack of visible bruises or injuries.

NOTE: Bruising often takes time to develop. Head injuries, such as a concussion or fractured skull, are not always visible.

2. The responding officer *can not* arrest where there is no probable cause to believe that a crime has been or is being committed.

- a. Officers must be just as careful to document the facts and circumstances which support their belief that there was not probable cause sufficient to arrest as they are to document facts and circumstances which support a probable cause determination.
- b. The responding officer has a duty to provide or arrange for emergency assistance to victims even if no arrest can be made. This can include, but is not limited to:

- 1) medical care;
- 2) transportation to a shelter; or
- 3) remaining at the scene of an alleged incident of domestic violence for a reasonable time until, in the reasonable judgment of the police officer, the likelihood of further imminent violence has been eliminated.
(MCL 776.22(3)(f).) (Appendix J).

3. Officers should not arrest an individual if the officer has probable cause to believe the individual was acting in lawful self-defense or in the lawful defense of another person. (MCL 776.22 (3)(b)(ii)) (Appendix J).

a. a person may lawfully use:

- 1) whatever force the person honestly and reasonably believes is necessary for self-protection or to protect another person from danger; and

NOTE: Greater force than that used or threatened may be necessary if the victim is smaller or weaker than the assailant.

- 2) deadly force when the person honestly and reasonably believes oneself or another person is in imminent danger of being killed, seriously injured or forcibly sexually penetrated.

Note: The Court of Appeals in *People v. Kurr*, 253 Mich App 317 (2002), held that the right to use deadly force in defense of others extended to actions taken to protect a fetus or embryo from an assault against the mother. This holding does not apply to what the US Supreme Court has held to constitute lawful abortions.

Note: It is possible for an assailant to inflict death, serious injury or forcible sexual penetration without the use of a weapon. A victim is justified in using deadly force to defend against such an assault. Therefore, it is possible for a victim to use deadly force against an unarmed assailant and be completely justified in the use of force, and not subject to arrest.

NOTES ON SELF-DEFENSE: Simply because the victim picked up a knife does not necessarily mean the victim committed a crime. When the victim uses a knife, the victim is using deadly force. But if the victim honestly and reasonably feared serious injury, the victim's use of the knife is justified. And the fact that the victim was not badly beaten in this incident does not mean that the victim could not have honestly and reasonably feared serious injury; the victim's picking up of the knife could have stopped the assailant this time.

The right to use force in self-defense and the defense of others is based upon reasonable belief. Even if the person is wrong about the level of danger, the use of force is lawful as long as the person's belief about the danger was honest and reasonable.

b. a person has no duty to retreat from:

- 1) an assault in one's home, or
- 2) a forcible entry of one's home.

Note: In *People v Canales*, 243 Mich. App. 571 (2000), the court held that the no-retreat rule applied to the porch area of homes.

However, in *People v Riddle*, 467 Mich 116 (2002), the court refused to extend the no-retreat rule beyond the dwelling and attached structures and ruled that the defendant did have a duty to retreat while in his backyard, if he could do so safely.

NOTE: The no-duty-to-retreat rule applies even when the assailant is a co-dweller in the home. *People v. McDaniels*, 70 Mich App. 469 (1976); *People v. Mathis* (on remand), 75 Mich App. 320 (1977). The no-duty-to-retreat-in-your-own-dwelling rule applies whether the force used or threatened was deadly or non-deadly. (See CJI 2d 7.17.)

c. Where there is a claim of self-defense the officer should determine if there is probable cause to believe that the party was acting in lawful self-defense or in lawful defense of another by considering:

- 1) the size, strength and bulk of the parties;
- 2) the apparent ability of each party to do what was alleged;
- 3) witness statements (including children);
- 4) offensive and defensive wounds (look particularly for injuries that are inconsistent with one party's story of how the injury was inflicted);
- 5) any history of domestic violence between the individuals;
and

- 6) other evidence (e.g. physical and circumstantial).

DOCUMENTING A DETERMINATION OF SELF-DEFENSE: Officers who determine that a party was acting in self-defense or in lawful defense of another must carefully document the reasons for their finding in their domestic relationship incident report form. Effective documentation includes a description of gestures, tone of voice, body positioning, prior incidents, and any other factors that support the finding of self-defense.

INTERVIEW TIP: To determine whether or not an individual was acting in self-defense, consider the situation from that person's perspective. Ask questions such as these: What did you think was going to happen? Why did you believe that?

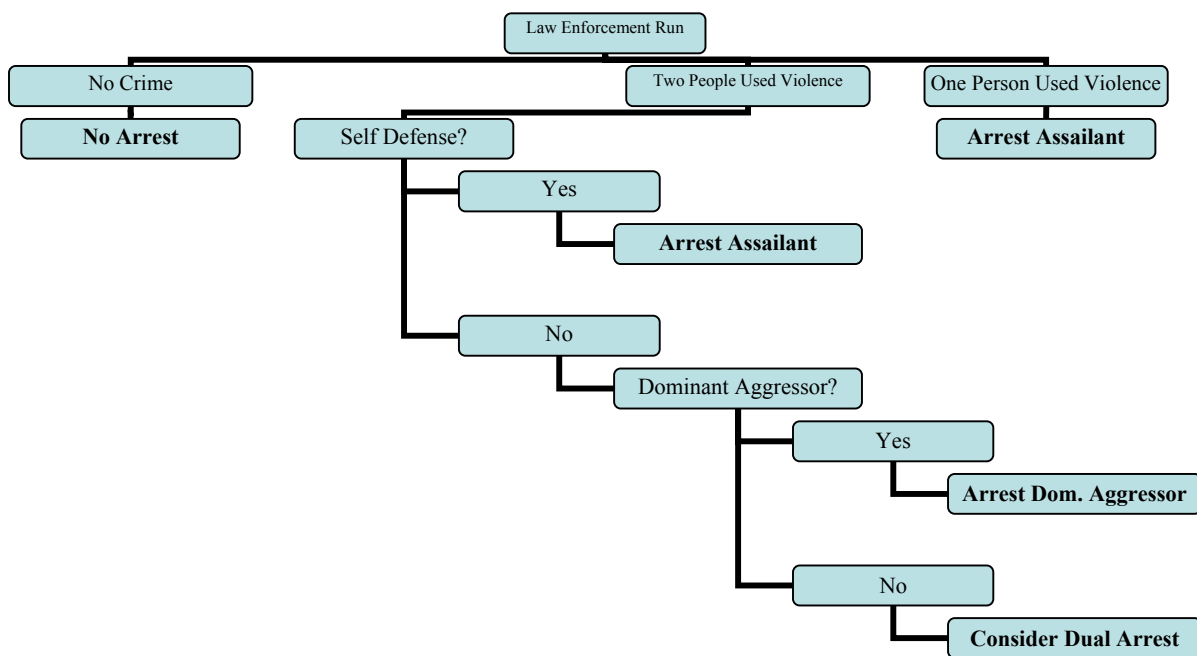
4. A determination by the responding officer that each party has committed assaults against the other and neither was acting in self-defense must not automatically lead to dual arrests (MCL 776.22). See Appendix K.
- a. When the officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, other individuals who reside together or formerly resided together or individuals who have or have had a dating relationship are committing or have committed crimes against each other, the officer, **when determining whether to make an arrest of one or both individuals**, should consider
- 1) the intent of the law to protect victims of domestic violence.;
 - 2) the degree of injury inflicted on the individuals involved;
 - 3) the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household; and
 - 4) any history of domestic violence between the individuals, if that history can reasonably be ascertained by the officer.
- b. Only in the rare cases where, after ruling out self defense and determining, through consideration of these factors, that

neither party was the dominant aggressor, should a dual arrest be considered.

NOTES ON MUTUAL BATTERING: An officer should not avoid conducting a thorough criminal investigation by simply arresting both parties where there are allegations of mutual battering.

MCL 776.22 explicitly provides that it is the intent of the law to protect victims of domestic violence and directs officers to consider a number of factors when faced with allegations of mutual battering to determine who should be arrested. (Appendix K).

ARREST DECISION



N. PROCEDURAL REQUIREMENTS WHEN RESPONDING TO DOMESTIC VIOLENCE

1. Officers are required to provide victims the written notice required by MCL 764.15c which must include the following (See Appendix H):

- a. name and telephone number of the responding police agency;
- b. name and badge number of the responding officer; and
- c. a prescribed statement informing the victim of the:
 - 1) right to obtain a copy of the police incident report;
 - 2) right to go to court and file a petition requesting a Personal Protection Order (PPO);
 - 3) right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated a PPO and has not been arrested; and
 - 4) local domestic violence shelter programs and other resources that provide victims information about services and legal rights.

NOTE: MCL 764.15c; MSA 28.874(3)

After investigating or intervening in a domestic violence incident, a peace officer shall provide the victim with a copy of the notice in this section. The notice shall be written and shall include all of the following:

- a) The name and telephone number of the responding police agency;**
- b) The name and badge number of the responding peace officer;**
- c) Substantially the following statement:**

"You may obtain a copy of the police incident report for your case by contacting this law enforcement agency at the telephone number provided.

The domestic violence shelter program and other resources in your area are (include local information).

Information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from these resources.

Your legal rights include the right to go to court and file a petition requesting a personal protection order to protect you and other members of your household from domestic abuse which could include restraining or enjoining the abuser from doing the following;

- 1) entering onto premises;**
- 2) Assaulting, attacking, beating, molesting, or wounding you;**
- 3) Threatening to kill or physically injure you or another person;**
- 4) removing minor children from you, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction;**
- 5) Engaging in stalking behavior;**
- 6) Purchasing or possessing a firearm;**
- 7) Interfering with your efforts to remove your children or personal property from premises that are solely owned or leased by the abuser;**
- 8) Interfering with you at your place of employment or education or engaging in conduct that impairs your employment relationship or your employment or educational environment;**

9) Engaging in any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence; and/or

10) Having access to information in records concerning any minor child you have with the abuser that would inform the abuser about your address or telephone number, the child's address or telephone number, or your employment address.

Your legal rights also include the right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated a personal protection order and has not been arrested."

- 2. Officers are required to provide or arrange for emergency medical assistance to victims (MCL 776.22(3)(f)) (Appendix J).**
- 3. Officers are required to provide the victim within 24 hours of the initial contact with the information required by the Crime Victim's Rights Act, including (MCL 780.753)(Appendix H):**
 - a. availability of emergency and medical services, if applicable;
 - b. availability of victim's compensation benefits and the address of the crime victim's compensation board;
 - c. address and phone number of the prosecuting attorney; and
 - d. the following statements:

"If you would like to be notified of an arrest in your case or the release of the person arrested, or both, you should call [identify law enforcement agency and telephone number] and inform them."

"If you are not notified of an arrest in your case, you may call this law enforcement agency at [the law enforcement agency's telephone number] for the status of the case."

- 4. Officers are required to prepare a written domestic relationship incident report on the standard domestic relationship incident report form developed by MSP, or a substantially similar form, after responding to an incident involving allegations of any crime where the victim and perpetrator have a domestic relationship; or allegations of a domestic relationship PPO violation or allegations of a foreign protection order violation, even if no arrest is made (MCL 764.15c)(Appendix G). The written report must include:**
- a. address, date, and time of the incident;
 - b. name, address, home and work telephone numbers, race, sex, and date of birth of:
 - 1) victim;
 - 2) assailant; and
 - 3) witnesses, including children;
 - c. information describing the assailant and whether there is a PPO issued against assailant;
 - d. relationship of any witness to victim or assailant;
 - e. name of person who called the law enforcement agency;
 - f. relationship of victim and assailant;
 - g. whether drug or alcohol use was involved and by whom;
 - h. narrative about the incident and the scene, describing:
 - 1) the incident and what led up to it;
 - 2) whether and how many times assailant physically assaulted victim;
 - 3) any weapon or object used;
 - 4) injuries sustained by the victim and how injuries were sustained;
 - 5) property damage; and
 - 6) if victim sought medical attention, information about transportation of victim, admittance to hospital or clinic for treatment, and name and telephone number of attending physician;

NOTE: It is important to document the names of the physician(s) and nurse(s) who actually treat the victim.

- i. description of previous domestic violence incidents between assailant and victim; and

NOTE: Include dates and locations of previous incidents, including out of state incidents. This information will enable the prosecutor to obtain police reports of prior incidents that can be used to determine whether the incidents involved domestic violence for purposes of enhanced sentencing. This information may also be used at trial (MRE 404(b)) to prove defendant's intent, motive, or why the victim is afraid of the assailant, if the victim is reluctant to participate in the prosecution.

Officers should specifically ask the victim about prior convictions, including convictions from other states and under local ordinances, as these do not always appear on the criminal history. (See section B in chapter 2.)

- j. date and time of the report, and name, badge number, and signature of the officer completing the report.

THE IMPORTANCE OF DOCUMENTATION:
Careful and complete documentation is crucial to successful prosecution.

It is also crucial to document indicators of lethality (see sections K and N in chapter 3) for purposes of conditional release (conditional bond).

Documentation may help the court in imposing conditions of release, including orders to stay away from the victim, turn in all firearms, go to drug and/or alcohol treatment, etc.

5. The law enforcement agency shall retain the completed report in its files (MCL 764.15c(3)) (Appendix G).
6. The law enforcement agency shall also file a copy of the written report with the prosecuting attorney within 48 hours after the domestic violence incident is reported to the law enforcement agency (MCL 764.15c(3)) (Appendix G).
7. When an arrest is made *with or without* a warrant for assault, assault and battery, violation of a substantially corresponding local ordinance, or aggravated assault, the assailant shall not be released by law enforcement on interim bond, but shall be brought before a magistrate for bond or arraignment as soon as possible where the relationship between the assailant and the victim is (Appendix K):
 - a. spouse or former spouse;
 - b. resident or former residents of the same household;
 - c. have had a child in common; or
 - d. current or former dating relationship.

MCL 780.582a provides that release on interim bond by law enforcement officers is denied to the assailant who is arrested with or without a warrant for misdemeanor assault, assault and battery, aggravated assault, or violation of a substantially corresponding local ordinance, where the perpetrator and victim have a domestic relationship.

Instead of being released on interim bond or personal recognizance by law enforcement officers, the assailant shall be held until brought (as soon as possible) before a magistrate for bond or arraignment (Appendix K).

8. When an arrest is made for violation of conditional release (conditional bond), the officer is required to prepare a “complaint of violation of conditional release” pursuant to MCL 764.15e (Appendix F), containing:

- a. officer’s name and badge number;
- b. statement of verification;
- c. statement of conditions; and
- d. statement of probable cause that assailant violated the conditions.

NOTE: It is important to properly prepare the complaint for violation of conditional release. (See a copy of a “Conditional Bond” on page 152 and a copy of a “Complaint of Violation of Conditional Release” on page 153).

NOTE: MCL 765.6b requires conditional release orders be entered into LEIN and removed when terminated.

2. Laws Regarding Domestic Violence

STATE OF MICHIGAN 6TH CIRCUIT COURT	DOMESTIC VIOLENCE BAIL BOND CONDITIONS	CASE NO _____ P.O. No. _____
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THE PEOPLE OF THE STATE OF MICHIGAN	vs	Defendant's Name, Address and Telephone Number Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Height _____ EyeColor _____ Weight _____ HairColor _____ Race _____ Date of Birth _____
--	-----------	---

CONDITIONAL BOND

Bond Amount: \$ _____ Bond Type: ☐ Cash or Surety ☐ 10% ☐ PR
 Offense(s): _____ Next Court Dates: _____

**BY SIGNING THIS BOND, THE DEFENDANT STATES THAT HE/SHE HAS READ THE
 SAME
 AND AGREES TO ABIDE BY ALL OF THE TERMS AND CONDITIONS CONTAINED
 HEREIN.**

- ___ 1. Not have direct or indirect contact with _____ until further order of the court.
- ___ 2. Not enter or return to the premises known as _____ until further notice.
- ___ 3. Not assault, beat, molest or otherwise verbally harass, intimidate or threaten anyone or be involved in any crime.
- ___ 4. Not consume alcohol or use other controlled substances.
- ___ 5. Submit to PBT or urine testing at the request of any police or court officer.
- ___ 6. Not possess a firearm or other dangerous weapon.
- ___ 7. Appear for any arraignment, pre-trial, trial or sentencing, and appear at such times and places as may be directed by the Court. If I am represented by an attorney, any notice to appear may be given to my attorney in place of personal notice to me.
- ___ 8. Not leave the state of Michigan without the permission of the Court.
- ___ 9. Notify the Court immediately by certified mail of any change of address or phone number.
- ___ 10. Other _____.

Pursuant to MCLA 764.15e and 765.6b

VIOLATION OF ANY OF THE ABOVE CONDITIONS WILL RESULT IN A WARRANTLESS ARREST.

 Effective Date Of Order: _____ Defendant

IT IS SO ORDERED _____
Judge/Magistrate
Bar No.

This Order to be entered in Law Enforcement Info Network.
 Order expires on ____/____/____.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,
V No.
HON.

_____,
Defendant,
_____ /

COMPLAINT OF VIOLATION OF CONDITIONAL RELEASE

I, _____, am a peace officer. I have determined by:
[print or type name & badge no.]

___ L.E.I.N. and verification with the police agency holding the order
___ Certified or true copy of order
___ Other [Describe] _____

That _____ released _____
[court] [name of defendant]
subject to the following conditions [state or attach a statement of relevant
conditions]

I have reasonable cause to believe that on _____ at _____
[date] [time]
the defendant violated those conditions as follows: [state violations]

[signature]

[law enforcement agency]

[date]

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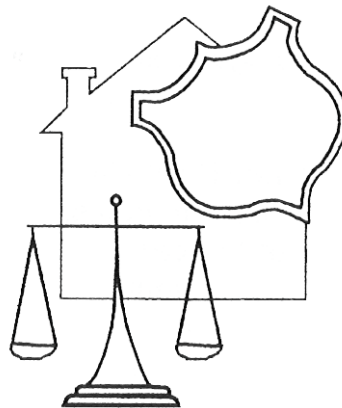
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3. Response Procedures

INTRODUCTION

Chapter 3 aims to provide safe and effective procedures for responding to, investigating, and documenting a domestic violence call. You should also use the knowledge gained from chapter 1, “The Nature and Prevalence of Domestic Violence,” and chapter 2, “The Laws Regarding Domestic Violence,” in responding and investigating.

All procedures outlined in this chapter ensure compliance with Michigan law and are consistent with procedures outlined in the State of Michigan model policy, *The Law Enforcement Response to Domestic Violence*, endorsed by the Michigan Commission on Law Enforcement Standards and the Michigan Domestic Violence Prevention and Treatment Board.



A. RESPOND TO THE SCENE OF DOMESTIC VIOLENCE

1. Respond immediately to the scene.

The U.S. Attorney General's Task Force on Family Violence recommends that domestic violence calls should receive high priority response.

"WHY IS IT IMPORTANT TO IMMEDIATELY RESPOND TO DOMESTIC VIOLENCE CALLS?"

- | |
|--|
| <ul style="list-style-type: none">▪ Lives are in danger.▪ Officers could prevent an assault or other crime.▪ Officer safety is maximized when officers arrive before violence escalates.▪ Immediate response increases the possibility of preventing serious or fatal injuries.▪ Immediate response decreases the possibility of a hostage situation. |
|--|

NOTE: The question in the above box assumes that the dispatcher or call taker has screened the call to make sure it concerns a situation that is in progress or current rather than an old complaint.
--

2. Evaluate the information received about the complaint.

a. Dispatch information.

Officers need to evaluate the information received from the dispatcher in order to determine potential dangers at the scene. While the dispatcher may not be able to obtain all of the relevant details, the potential for unknown problems is reduced by the amount of critical information officers receive prior to arriving at the scene. The following is a list of information the call taker/dispatcher should obtain, but it is not meant to be exhaustive:

NOTES ON DISPATCH

Those who may be taking the incoming calls or dispatching should immediately dispatch officers to the scene.

Although it is true that in many jurisdictions officers do not handle dispatching or taking calls, officers should have knowledge of the information that a dispatcher is supposed to obtain. This knowledge will enable officers who do not receive vital information to ask if it is available.

- 1) identity of the person making the call;
- 2) specific location of complaint (including apartment number, lot number, etc.) and of caller if not at the scene (for example, at a neighbor's house, etc.);
- 3) phone number of the caller;
- 4) what is happening (e.g., is the caller safe? is the assailant still present? etc.);
- 5) presence of weapons;
- 6) presence of children, as victims or witnesses;
- 7) any reported injuries;
- 8) whether a Personal Protection Order (PPO) or Foreign Protection Order (FPO) is in effect;
- 9) age of the complaint (e.g., in progress, hours old);
- 10) prior history (While not always a reliable predictor of what will happen in a particular incident, repeat calls may offer a potential for escalated violence because the level of violence often increases over time.);
- 11) whether the assailant is on probation or parole; and
- 12) whether the assailant is subject to a conditional release order (conditional bond) (MCL 765.6b).

NOTE: Protective conditions of release (conditional bond) are discussed in the legal section. See chapter 2, section M. Violations of these conditions of release are subject to warrantless arrest on probable cause pursuant to MCL 764.15e and can be verified via LEIN. (See section J in this chapter.)

NOTE: Although all the information listed is helpful, officers need to be aware of proper radio communication procedures as they relate to air time, the use of secondary frequencies (where available), etc.

A dispatcher may be able to keep the caller on the telephone in order to relay additional information to officers who are responding to the call.

NOTE: All of the elements covered in this objective are procedures that are to be done *prior* to making initial contact with either the victim or assailant.

- b. **Information from witnesses.** Witnesses may be able to give additional information that will be helpful to officers in making contact at the scene.
- c. **Information from other officers.** Other officers may have additional information if they have responded to calls at this location before. Officers should share information.
- d. Some agencies maintain a **computerized log of prior calls** by location or name of complainant. **The dispatcher** should check such logs and advise responding officers if the agency has a record of prior contacts.

3. Approach the scene in a cautious manner.

Officers should approach a scene where domestic violence has been reported in the same manner they would approach any in-progress crime scene.

- a. On initial approach, **park a short distance from the scene**. In approaching the scene, officers should also:
 - 1) Avoid lights and sirens unless the danger of the situation warrants extreme speed—assailants should not be alerted to the approach of the police.
 - 2) Approach from different directions when possible.
 - 3) Make sure the patrol car cannot be blocked.
- b. **Wait for backup** before entering the scene—more than one officer should respond to all domestic violence calls whenever possible. In addition, officers should always notify dispatch of arrival prior to entering the scene. While waiting for backup, officers should:

- 1) Listen and observe the scene.
 - 2) Observe what is happening in **surrounding houses**. Are people looking out of windows? Are people gathering in the area?
 - 3) Make a mental note of the **physical layout** and conditions of the scene.
 - 4) Note **changes in conditions** (e.g., lights turning on or off, children starting to cry, drapes moving, children at windows, etc.).
 - 5) Always be cognizant of and maintain an **avenue of escape**.
- c. **Exchange information with backup officer(s)** about observations. Coordinate the approach.
- d. In approaching the scene, **use cover and concealment and use separate approaches**.
- 1) When no other cover is available, use patrol car engine block for initial cover when danger has been established.
 - 2) Be quiet and careful not to telegraph the approach with loud radios, conversation, jingling keys, etc.
 - 3) Be aware of surroundings—fences, holes, dogs, obstacles or hazards.
 - 4) Look up—at the second floor, roofs, porches, etc.
 - 5) Be aware of clues to what can be found inside. For example, children's toys in the yard would indicate the possibility of children being present.
 - 6) Check vehicles in the driveway for recent arrival (warm hood). Look inside for clues—shotgun shells, handgun case, etc.
- e. **Do not stand in front of doors or windows**. Take a position of cover by standing on either side of the doorway (where possible) before attempting to make contact with individuals inside.
- f. **Maintain avenues of escape**. Officers should be aware of conditions as they change in order to maintain a safe exit (e.g., people coming from unexpected locations, neighbors entering the scene).
- 1) Officers must be conscious of the position and movement of all parties, including other officers.
 - 2) Officers must take control of the scene to prevent unexpected entry or exit.

4. Observe and listen for unusual conditions upon arrival at the scene.

LISTENING: Listening before making contact is crucial to information gathering. It is very important—prior to making contact—in helping determine who is being aggressive. Before making contact, officers should listen for who is talking, who is threatening, etc.

- a. Officers should listen especially for **loud arguments**, and should also try to determine:
- 1) the number of people involved;
 - 2) whether children are crying;
 - 3) whether property in the house is being destroyed or damaged;
 - 4) from what part of the house the noises are coming (front, back, upstairs, outside);
 - 5) what is being said;
 - 6) threats;
 - 7) dogs barking;
 - 8) weapons being used;
 - 9) who is most aggressive;
 - 10) who is in control of the situation;
 - 11) what is actually being said.

The answers to these questions can support probable cause to enter and arrest and may be admissible in court as excited utterances.

- b. Officers need to **observe the scene and look for fresh damage**, such as a broken window, forced door, broken items laying outside (or inside if visible). This can provide information on the possible type of crimes involved and can provide probable cause for an arrest.

If a window is available an officer can observe the interior layout and what is taking place inside.

- 1) Are the suspect and victim together?
- 2) If not, is it possible to tell where each is?
- 3) Are weapons being used?
- 4) Is there any evidence that could be hidden before entry is allowed?

These observations can help an officer decide if a forced entry is warranted.

c. **Other conditions to note:**

- 1) non-conventional weapons involved—household items, baseball bats, chairs, vases, lamps, kitchen knives, fireplace pokers, etc.;
- 2) crowd gathered;
- 3) number of vehicles that are in the driveway.

NOTE: There will be some cases where an assault may be in progress and may require intervention before some of this information can be gathered.

5. Request assistance through the dispatcher if the situation warrants it.

Such a situation might include:

- a. the possibility of more individuals being involved than can be controlled by the responding officers;
- b. a possible hostage situation; or
- c. known history of violence or resistance.

WHEN SHOULD YOU ASK FOR ADDITIONAL BACKUP?

It is better to ask for assistance and not need it than not to ask and then need it.

B. INITIAL CONTACT AT THE SCENE

1. Attempt to make contact when it appears no one is at home.

After following the initial approach procedures outlined in the previous section, officers should attempt to make contact. If it appears initially that no one is at home, officers should:

- a. try to establish voice contact by shouting for a response and attempt to engage the party in conversation if voice contact is achieved;
- b. ask the dispatcher to call the scene, if the number is available;
- c. interview any witnesses (neighbors, etc.) in the area.
- d. Additional efforts officers might attempt in order to determine if anyone is at the scene:
 - 1) note if cars are present,
 - 2) leave and return silently using another approach,
 - 3) observe the scene for changes in lighting and listen for sounds,
 - 4) pass information on to other officers and shifts if, after investigation, the decision to leave was made without making contact at the scene,
 - 5) request that a supervisor determine if a forced entry is warranted if officers are uncomfortable about leaving a scene without gaining entry.

2. Attempt to gain entry by obtaining consent.

- a. Ask to be allowed into the residence.
- b. Establish the person's authority to give consent, considering:
 - 1) whether the person lives there;
 - 2) age of the person giving consent; and
 - 3) area of the dwelling to be entered.

NOTE: The best method of gaining entry is by obtaining consent.

NOTE: Refer to the legal information about entry without a warrant in chapter 2.F.

3. Consider a forced entry if there are exigent circumstances.

If entry continues to be denied, there are a number of options for trying to gain entrance. For example, officers can ask the dispatcher to call the scene and speak to the subject denying entry. This may provide an opportunity for others at the scene to allow entry.

In considering a forced entry, officers can talk to any available witnesses who may have information that give officers grounds to enter. Officers can also observe the scene from a distance or approach again unannounced to listen and observe further; such observations may establish grounds for a forced entry. If evidence of a crime in progress exists, a forced entry must be considered. In addition, a forced entry should be considered if exigent circumstances exist:

- a. risk or danger to police or others inside or outside the dwelling;
- b. imminent destruction of evidence;
- c. need to prevent the suspect's escape; and
- d. hot pursuit.

If the officers decide that a forced entry is warranted, the officer must contact a supervisor when applicable, follow laws governing forced entry for public safety, and follow departmental procedures where applicable.

NOTE: Actual entry procedures are discussed in the next section of this chapter.

4. Evaluate initial information when the suspected assailant answers the door.

To overcome the tactics commonly used by assailants, officers should:

- a. not accept statements that the call was a mistake;
- b. be aware that the assailant is likely to deny or minimize the violence;
- c. be aware that the assailant may blame the victim or blame alcohol or drugs for the violence;
- d. ask to speak to each person at the scene; and
- e. refuse to leave without speaking to the victim even when the assailant says everything is fine.

ASSAILANT TACTICS

Review the information presented on assailants in chapter 1, sections C and D. You should draw on this information in assessing assailant behavior and statements when responding to domestic violence scenes.

5. Evaluate initial information when the victim answers the door.

By being aware of how fear may impact a victim's behavior, officers can effectively evaluate the information that the victim is giving. Officers must also be aware that the assailant may be controlling the victim from outside of the officers' view. Officers should:

- a. ask if the assailant is at the scene;
- b. not accept statements that the call was a mistake;
- c. look for signs of physical and/or emotional trauma;
- d. ask to speak to each person at the residence; and
- e. refuse to leave without further investigation, even if the victim says everything is fine.

In addition, the officer should scan the scene for the presence of other possible witnesses, including children;

NOTE: Officers should use the safety and entry tactics that will be discussed in the next section.

NOTE: For an effective response officers must remember the information from chapter 1, sections E, F and G. For example, because the victim may be answering the door while the assailant watches or listens just out of view, officers must remember that victims can be very intimidated by the assailant. Also, fear can just as easily look like anger or hostility.

6. Evaluate initial information when a young child or youth answers the door.

- a. Identify themselves to the child and explain why they are there.
- b. Ask the child who else is present at the scene.
- c. Evaluate whether there is an independent basis for entry (e.g., exigent circumstances).
- d. Evaluate whether it is reasonable to enter the residence on the basis of the child's comments or behavior that indicate an emergency or exigent circumstances.
- e. Ask to speak to an adult and refuse to leave without further investigation when the child says everything is fine.

<p>NOTE: Officers need to address children using words and actions appropriate to the child's age.</p>

C. ENTER THE DOMESTIC VIOLENCE SCENE EFFECTIVELY AND SAFELY

1. Enter the scene cautiously and safely.

a. Use safe entry tactics.

- 1) Maintain visual contact with partner.
- 2) Use a cover/contact technique—one officer should make contact, explain their presence, and request entry while the second officer is covering.
- 3) Use caution and visually inspect the interior—the cover officer scans the scene and takes note of surroundings while the contact officer attempts to gain permission to enter.
- 4) Do not immediately enter a scene based upon just a verbal invitation (someone yelling “come in”).
- 5) Use caution—swing the door open and pause to visually inspect the interior before entering.
- 6) Note the hands and physical appearance of the person who answers the door.
- 7) Scan the room.
- 8) Note the location of others in the room.
- 9) Make sure that both hands of everyone present in the room can be seen; and
- 10) Open the door all the way, not letting anyone get behind both officers or between both officers and the door.

b. Check for weapons.

Scan the room for weapons or objects that can be used as weapons.

Check for the presence of possible weapons. A good technique for checking for weapons is to have one officer engage the assailant in conversation and then circle the assailant. The assailant is forced to turn in order to keep the officer in view, allowing the other officer to see the assailant’s back, pockets, and waistband. Do not overlook the possibility that others present may possess weapons.

c. Secure the scene.

- 1) Observe the location and assess the body language of each individual:
 - a) Is one behind the other?
 - b) Are their hands visible? If not, ask people to take their hands out of their pockets, etc.
 - c) Is it possible that one of the individuals is being threatened by another?

- 2) Restrain the assailant if necessary.
- 3) Restrict the movement of all present.
- 4) Eliminate distractions (for example, turn off radios and television).
- 5) Do not allow anyone on the scene to walk out of sight.
- d. **Identify yourself as a police officer.**
- e. **Explain the presence of police on the scene and that officers are required to make sure everyone is safe.**
- f. **Locate all those present at the scene;**
 - 1) Do not assume that those first visible are the only individuals present.
 - 2) Ask who else is present.
 - 3) Make contact with all present.
 - 4) Be sure you know who is at the scene.
 - 5) Identify all present at the scene.
- g. **Observe the condition of the scene and look for any possible signs of injury.**
 - 1) Secure medical treatment if necessary.
 - 2) If not life threatening, wait until the scene is under control before treating the injury.
- h. **Advise all parties that the police are there to conduct an investigation to determine if a crime has been committed.**

Advise all those present that they each will be interviewed separately.

2. **Separate the victim and the assailant immediately upon entry, if possible, to separate rooms.**
 - a. Separate the victim and suspected assailant. This can help eliminate nonverbal intimidation of the victim and re-escalation of the violence.
 - b. Avoid separating the victim and suspected assailant into kitchens and bedrooms—guns are often kept in bedrooms and the kitchen contains a great number of potential weapons.
 - c. Use caution not to expose your weapon during the separation process.

- 3. Consider having the assailant step outside if you are working alone. [Note: One officer response to domestic violence complaints is *strongly discouraged* and is only to be used when no back-up unit is available.]**

Consider interviewing the assailant outside if working alone —this would separate the victim and the assailant and remove the assailant from weapons that may be easily available inside the house.

Officers should position themselves to be able to monitor the door to prevent being surprised by someone in the house.

- 4. Maintain, as much as possible, physical separation of the victim and the assailant without losing eye contact with the other officer.**
- a. Maintain eye contact with each other, even when separating the parties into adjoining rooms.
 - b. Never leave one officer alone with both the assailant and victim present.
 - c. Do not allow re-contact between the assailant and victim—this can cause a re-escalation.

D. CONDUCT A PRELIMINARY CRIMINAL INVESTIGATION UPON ENTRY TO THE SCENE

- 1. Observe the location, posture, and demeanor of all present when entry and separation is made.**

Officers should be observing for signs and conditions that will assist them in determining if probable cause exists that a crime has been committed.

NOTES ON PRELIMINARY OBSERVATION

Observations by officers at the scene can provide crucial information before the interview even begins.

Officers should pay close attention to and record in field notes any spontaneous statements (excited utterances) that occur before the interview actually begins.

Officers should note the:

- a. location;
- b. posture;
- c. demeanor;
- d. physical appearance and condition, and
- e. emotional condition of all present.

For example, an individual who is extremely agitated or intoxicated may be of danger to officers and anyone else present. Or an individual may be hiding a weapon or trying to block the officer's view into a particular area.

2. Scan the scene and make a mental note about the condition of the scene.

Note:

- a. damage to furniture or walls;
- b. apparent signs of recent breakage;
- c. food spilled on floors or counters;
- d. kitchen knives, meat cleavers in rooms other than the kitchen; and
- e. broken glass, etc.

3. Make a mental note of any spontaneous statements (excited utterances) made by those present (e.g., victim, assailant, witnesses, including children).

- a. Officers should take note of any statements made spontaneously either to officers or in the presence of officers. A frightened victim or witness, or an angry assailant, may blurt out information when police first arrive.
- b. Excited utterances are admissible in court and also become part of the officer's probable cause determination.
- c. In addition to the actual utterance, it is important to note the appearance, demeanor, and emotional state of the person making the statement, as well as how long after the event the statement was made.
- d. Officers can use these statements later in conducting an interview—individuals may have second thoughts about giving the same information, but if officers have made note of what was said originally, they will be able to question the individuals about their earlier statements.

4. Make a mental note of the physical condition and emotional state of all those present.

Although at this stage officers are not yet making detailed notes, the initial appearance can be important to making probable cause decisions later.

5. Take note of anything that may be evidence of a crime which will need to be properly collected.

Although officers cannot stop to properly collect evidence of a crime when first entering the domestic violence scene and separating the parties, it is important that they note items they will want to collect as well as ask questions about during the interview.

6. **Take note of anything that may require explanation or that can be used by officers in interviewing.**
 - a. Note anything that may require explanation.
 - b. Note anything that can be used as a basis for questioning during the interview.
 - c. Because victims and witnesses can be traumatized by an incident of domestic violence, quite often they find it difficult to relate the events of the violence in a clear and systematic way. Question victims about specifics to assist in recall. Specific questions might refer to:
 - 1) damage to walls and furniture;
 - 2) bruises;
 - 3) crying children; etc.
7. **Seize any weapons that are visible or available.**

NOTE: It is crucial that officers ask if firearms are in the house.

8. **Make detailed notes of any apparent injuries.**

NOTE: Written notes on the physical and emotional condition of the victim, combined with notes on what the victim says has happened, may be useful in either prosecution or in later attempts to provide appropriate intervention and referral to service agencies. Color pictures of injuries, at least two shots per injury with a standard object beside the injury (i.e., penny), will supplement the permanent record of injuries. If photography is not an option, a standard body diagram will make the reporting of location more efficient and accurate.

- a. Physical injuries are most commonly inflicted on the areas of the face, neck, head and trunk. Officers should note the size, color and location of all injuries as specifically as possible, using a body diagram if helpful. When detailing injuries, officers should note the following:
 - 1) general appearance (clean, well kept, versus dirty or disheveled);
 - 2) bruises (note size, color, location, including black eyes);
 - 3) burns (splashing water, cigarette, etc.);
 - 4) rope or tie marks;
 - 5) imprints of objects, including hands, as bruising on the body;
 - 6) lacerations or abrasions;
 - 7) whip marks (particularly on back);
 - 8) deafness or difficulty with hearing (caused sometimes by slapping or hitting the side of the head);
 - 9) swelling on any part of the body, but particularly around the face, long bones, and joints;
 - 10) strangle marks on the neck or other indicators of strangulation:
 - a) raspy breathing;
 - b) hoarseness;
 - c) possible loss of voice;
 - d) difficulty swallowing; or
 - e) spots near injuries due to the bursting of tiny blood vessels (capillaries);
 - 11) blood in the eye;
 - 12) conjunctivitis of the eye (like pink eye);
 - 13) crescent moon shape of fingernail marks;
 - 14) needle tracks; or
 - 15) injuries in various stages of healing (indicating repeated injury), for example, purple and yellow-green bruises.

- b. In addition to observed injuries, officers should attempt to ascertain the possible extent of the injuries by asking specific questions, such as:
 - 1) Were you strangled?
 - 2) Were you shaken?
 - 3) Did you have trouble breathing?
 - 4) Did you faint or lose consciousness?
 - 5) Did you vomit?
 - 6) Are you having trouble swallowing?
- c. Noting the emotional state of a person can also help determine the physical condition. Note:
 - 1) any obvious confusion or disorientation: slurred speech, inability to understand or remember;
 - 2) agitation;
 - 3) combativeness;
 - 4) significant fearfulness, especially in children;
 - 5) intoxication by alcohol or some other substance (dilated or very small pupils); and/or
 - 6) severe anxiety.

E. INTERVIEW THE SUSPECTED ASSAILANT AS PART OF THE COMPLETE CRIMINAL INVESTIGATION AT A DOMESTIC VIOLENCE SCENE

1. Maintain physical separation of the victim and the suspected assailant without losing eye contact with the other officer.

- a. Officers should maintain physical separation of the victim and the suspected assailant during the interview. This will help:
 - 1) prevent the assailant from attempting to intimidate the victim through body language and eye contact;
 - 2) minimize the assailant's ability to interfere with the victim's interview; and
 - 3) prevent the assailant from changing stories to counter the victim's statements.
- b. In addition, During the interview, officers should:
 - 1) maintain eye contact with partner;
 - 2) not allow others at the scene to intervene in the interview; and
 - 3) not allow recontact between the assailant and the victim.

2. Interview the suspected assailant.

- a. Sight and sound separation will **prevent the suspected assailant from attempting to intimidate the victim** through eye contact and from hearing the victim's interview.
- b. **The suspected assailant should be asked questions *about the current incident*. The officer should also ask *what happened*, not *why***, avoiding any attempts by the suspected assailant to draw the officer into the suspected assailant's excuses. The officer should avoid giving the suspected assailant an excuse or opportunity to escalate.
- c. **The officer should maintain an air of neutrality**, avoiding unnecessary comments and any display of hostility or anger. The officer must conduct a complete interview and a thorough investigation.

QUESTIONING THE SUSPECTED ASSAILANT

Questioning of the suspected assailant should be direct and concise and should be conducted in a fact-finding manner. Conducting the interview before the assailant has had time to think about the situation and insisting that the assailant discuss the actual assault can help avoid fabricated stories and excuses. The officer should not minimize the seriousness of the assault or indicate sympathy for the assailant.

MIRANDA: An assailant arrested prior to the interview must be given *Miranda* warnings if a custodial interrogation is going to be conducted.

3. Recognize tactics that assailants might use to manipulate officers during the interview.
 - a. **The assailant may attempt to rationalize the violence.** Asking *what* happened not *why* it happened can counter this.
 - b. **The assailant may deny or minimize the violence.**
 - c. **The assailant may blame the victim for causing the violence.** Again, officers should ask *what* happened and avoid letting the assailant discuss *why*.
 - d. **The assailant may attempt to make a complaint against the victim** to counter any complaint the victim may be able to make in response to the assailant's violence.
 - e. **The assailant may present a very calm, cooperative, non-combative demeanor** in an attempt to persuade officers that the assailant is not guilty of any wrong-doing.
 - f. **The assailant may attempt to draw the officer in** by making statements such as "what would you do" or "you know how it is."

ASSAILANT TACTICS

What are some of the tactics an assailant might use during the interview?

- minimize or deny the violence,
- blame the victim for causing violence,
- claim to be an innocent victim,
- make counter complaints,
- attempt to manipulate officers.

These tactics were covered in chapter 1 and are described by assailants as tactics they commonly use.

NOTE: Officers should listen to the suspected assailant and advise the suspected assailant that a complete investigation will be conducted.

F. INTERVIEW THE VICTIM AS PART OF THE COMPLETE CRIMINAL INVESTIGATION AT A DOMESTIC VIOLENCE SCENE

1. Interview the victim separately.

Separating the victim and the assailant before beginning the interview will:

- a. **prevent the suspected assailant from making eye contact with the victim** and thereby help minimize the ability of the suspected assailant to intimidate the victim; and
- b. **prevent the suspected assailant from listening to the victim's interview**, which will help minimize the suspected assailant's ability to interfere with the victim's interview, change stories to counter the victim's statements, and retaliate against the victim later.

INTERVIEWING THE VICTIM

The officer often needs information from the victim in order to determine the extent of the violence and what crimes were committed and to conduct further investigation. Injuries may be internal or otherwise not readily visible, perhaps hidden under hair or clothing, so the interviewing officer needs to carefully question the victim. Be aware that what initially appears to be a misdemeanor domestic assault may turn out to be a felony, such as felonious assault or criminal sexual conduct.

Some medical facilities have photographic equipment available that allows for photographs to be taken of bruising injuries before they are visible to the naked eye. Officers should take advantage of such facilities where available.

2. Overcome the reluctance of the victim to talk.

- a. Officers must **exercise patience**. Because the victim may be reacting to trauma and fear or may be embarrassed and confused, officers must:
 - 1) avoid acting rushed, bored, or unconcerned;
 - 2) avoid showing frustration;
 - 3) avoid lecturing the victim;
 - 4) avoid being judgmental;
 - 5) ask questions in a calm, reassuring way; and
 - 6) be persistent in questioning by rephrasing questions.

NOTE: Chapter 1.E discussed some of the common ways a victim may react and appear at the scene. In order to gain cooperation and trust, the officer must appear to be aware of and responsive to the victim's feelings. By this type of reassurance, the officer may increase the willingness of the victim to reveal the specifics of the crime.

- b. Often victims only want the violence stopped and may appear unwilling to participate with further investigation. **Officers should emphasize to victims that they have suffered *criminal* assault, which is not permitted regardless of the relationship between the individuals.** The victim's right to be free from assault and abuse should be stressed.
- c. **Officers should give assurance that the violence of the assailant is not the victim's fault.** Questions that appear to blame the victim, such as, "Why haven't you left?" may cause further intimidation and obscure important evidence. Officers should emphasize *what* happened and not *why*—the criminal act is the issue.
- d. Individual victims often feel that they suffer alone. **Officers should assure victims that they are not alone in being the victims of abuse.**
- e. Victims have no way of knowing about services available unless someone familiar with these services provides them with this information. **Officers should advise victims that there are support services available through the local domestic violence shelter program** and that information on these services will be made available.

NOTE: Sections L and M, later in this chapter, will discuss victim assistance and give specific information which must be distributed to the victim.

- f. Victims want the violence to be stopped and may not understand the need for further action. **Victims should be advised that domestic violence usually happens again and often gets worse unless there is intervention** with consequences for the violent behavior. Victims should also be told that it is the officer's responsibility to investigate and make arrest decisions.
 - g. **Officers should explain to the victim that an arrest does not necessarily mean a prison term for the offender.** There are court mandated counseling and other programs that may help assailants change their violent behavior.
2. **Interview the victim, being sure to ask certain questions.**

NOTES ON QUESTIONS FOR THE VICTIM

Questions should be direct and specific rather than general. For example, asking the victim "How are you?" may result in an answer that the victim is "fine" rather than information about specific injuries. The officer can use the following types of questions and approaches to solicit the necessary information.

Another strategy often used to help the victim feel more at ease is phrasing questions so that the victim feels the officer understands and can see what is happening.

- a. Where do you hurt?
- b. How did you get hurt?
- c. Who hurt you?
- d. What is your relationship to the assailant?
- e. What happened?
- f. How were you injured? Were you hit? If so, with a closed or open fist? Where on your body were you hit?
- g. Were there any weapons or objects used to strike you?
- h. Were any threats made against you or others? Are there any firearms in the house?

- i. Were you forced to have sex when you did not want to? Were you threatened with harm if you did not have sex?

NOTE: The victim may be reluctant to talk about sexual assault. The officer must follow up on any information the victim provides while being sensitive to the emotional state of the victim.

- j. Did the assailant hurt any pets?
- k. Did the assailant break or damage anything?
- l. Is the assailant on probation or parole? (Confirm with the dispatcher.)
- m. Is the assailant out on bond?
- n. Are any court cases pending against the assailant? Has the assailant been arrested before? Are there any Personal Protection Orders (PPOs) in effect?
- o. Does the assailant have reason to believe you might want to leave the relationship?

4. Question any statements by the victim that injuries were caused by an accident.

Officers should question the victim about statements like:

- a. I fell down the stairs.
- b. I ran into a door.
- c. I'm accident prone.
- d. I'm clumsy.

Officers should question the victim to obtain specifics about how the injuries occurred.

5. Interview the victim about behaviors that might constitute stalking, being sure to ask certain specific questions.

- a. Has the assailant been following you?
- b. Has the assailant been showing up at your place of work or school?
- c. Has the assailant been coming to or watching your home?
- d. Has the assailant been trying to contact you by telephone or mail or email?
- e. Has the assailant threatened you, your family or anyone who lives with you?
- f. Has the assailant left you anything (e.g., flowers, letters, packages, etc.)?

- g. Has the assailant damaged any of your property?

NOTE: Stalking legislation was discussed in chapter 2 (sections D and E) of the legal section. A copy of the statute is included in the legal appendix.

6. Ask historical questions.

Having some information on the history of the relationship may assist the officer in determining how dangerous the situation is or might become to both officers and the victim. It can also help the prosecutor who will be trying the case. Some questions that are helpful in determining relevant historical information are:

- a. When was the first time the assailant hit you? How long ago was the most recent incident?
- b. When was the first time you were treated by a doctor or hospitalized for injuries inflicted by the assailant?
- c. When was the first time the assailant broke a bone?
- d. When was the first time the assailant used an object to hit you?
- e. When was the first time the assailant used a knife or gun? Does the assailant currently possess any firearms?
- f. What incident was the most serious?
- g. Has the assailant ever threatened to kill you or another member of your family or household? Has the assailant ever been arrested for assaulting you or your family or friends? Where? When?
- h. Has the assailant ever forced you or threatened you to have sex when you did not want to?

NOTE: Again, the victim may be reluctant to talk about sexual assault. The officer must follow up on any information the victim provides.

- i. Is the assailant on probation or parole?
- j. Is the assailant out on bond?
- k. Are there any Personal Protection Orders (PPOs) or other court orders, from Michigan or any other jurisdiction, in effect against the assailant?

- l. Has the assailant ever stalked you in the past?
- m. Other questions for the victim could include:
 - 1) Has the assailant ever threatened or harmed a pet?
 - 2) Has the assailant ever prevented you from leaving?
 - 3) Has the assailant ever disabled your car?
 - 4) Has the assailant ever disconnected the phone?
 - 5) Has the assailant ever closed out a joint bank account?
 - 6) Has the assailant ever kept the children at the end of a visitation period?
 - 7) Has the assailant ever followed or harassed you in the past?

Assailants also abuse multiple partners and often will have a history of violence. Ask the victim about any past assaults perpetrated by the assailant on past partners.

Assailants will also sometimes stalk past partners while abusing a current partner. If appropriate, ask if the victim has knowledge of any stalking behavior directed at past partners.

<p>NOTE: Past convictions, even if the victim was a different partner and even if the past conviction occurred in another state, should be used to enhance the penalty for the current charge. See section B in chapter 3.</p>

7. Interview children away from the parents, in the home.

Phrase questions similarly to those listed previously, using words that are understandable to the child.

G. DETERMINE WHETHER PROBABLE CAUSE EXISTS TO MAKE AN ARREST WHEN RESPONDING TO DOMESTIC VIOLENCE

1. Relevant factors that should be considered in attempting to establish probable cause.

- a. statements by the victim, children or other witnesses;
- b. demeanor of victim, assailant, children or other witnesses;
- c. the dispatcher's and other officers' information;
- d. physical evidence that a crime occurred;
- e. aggressive or threatening behavior by the assailant;
- f. information gathered by investigating wounds to determine:
 - 1) offensive wounds, and
 - 2) defensive wounds;
- g. damaged or broken property in the house;
- h. weapons being brandished; or
- i. the existence of a Personal Protection Order or Foreign Protection Order.

NOTE: Legal instruction on probable cause was discussed in section M of chapter 2.

2. Factors that should *not* be considered in determining probable cause.

- a. the lack of a PPO or FPO;
- b. the fact that no arrests were made previously;
- c. that the victim does not want the assailant arrested or prosecuted;
- d. the officer's belief that the victim does not want prosecution;

- e. verbal assurances by either party that the violence will stop or claims that there was no violence when evidence of physical abuse exists;
- f. the possibility of reprisals against the victim;
- g. the race, ethnicity, sexual orientation, social class and/or occupation of the victim or the assailant;
- h. threats by the assailant to sue the police; and
- i. negative consequences to the assailant's status in the community or claims of negative economic impact.

3. Factors that should *not* preclude a finding of probable cause.

- a. denial by either party that violence occurred or lack of desire of the victim for the arrest or prosecution of the assailant; or
- b. a lack of visible bruises or injuries.

4. The responding officer *can not* arrest where there is no probable cause to believe that a crime has been or is being committed.

a. Document:

Officers must be just as careful to document the facts and circumstances which support their belief that there was not probable cause sufficient to arrest as they are to document facts and circumstances which support a probable cause determination.

b. Provide Assistance:

The responding officer has a duty to provide or arrange for emergency assistance to victims even if no arrest can be made. This can include, but is not limited to:

- 1) medical care;
- 2) transportation to a shelter; or
- 3) remaining at the scene of an alleged incident of domestic violence for a reasonable time until, in the reasonable judgment of the police officer, the likelihood of further imminent violence has been eliminated. (MCL 776.22(3)(f).) (Appendix J).

5. Officers should not arrest an individual if the officer has probable cause to believe the individual was acting in lawful self-defense or in the lawful defense of another person. (MCL 776.22 (3)(b)(ii)) (Appendix J).

A person may lawfully use:

- 1) whatever force the person honestly and reasonably believes is necessary for self-protection or to protect another person from danger; and

NOTE: Greater force than that used or threatened may be necessary if the victim is smaller or weaker than the assailant.

- 2) deadly force when the person honestly and reasonably believes oneself or another person is in imminent danger of being killed, seriously injured or forcibly sexually penetrated.

Note: It is possible for an assailant to inflict death, serious injury or forcible sexual penetration without the use of a weapon. A victim is justified in using deadly force to defend against such an assault. Therefore, it is possible for a victim to use deadly force against an unarmed assailant and be completely justified in the use of force, and not subject to arrest.

NOTES ON SELF-DEFENSE: Simply because the victim picked up a knife does not necessarily mean the victim committed a crime. When the victim uses a knife, the victim is using deadly force. But if the victim honestly and reasonably feared serious injury, the victim's use of the knife is justified. And the fact that the victim was not badly beaten in this incident does not mean that the victim could not have honestly and reasonably feared serious injury; the victim's picking up of the knife could have stopped the assailant this time.

The right to use force in self-defense and the defense of others is based upon reasonable belief. Even if the person is wrong about the level of danger, the use of force is lawful as long as the person's belief about the danger was honest and reasonable.

3. a person has no duty to retreat from:
 - 2) an assault in one's home, or
 - 3) a forcible entry of one's home.

Note: In *People v Canales*, 243 Mich. App. 571 (2000), the court held that the no-retreat rule applied to the porch area of homes.

NOTE: The no-duty-to-retreat rule applies even when the assailant is a co-dweller in the home. *People v. McDaniels*, 70 Mich App. 469 (1976); *People v. Mathis* (on remand), 75 Mich App. 320 (1977). The no-duty-to-retreat-in-your-own-dwelling rule applies whether the force used or threatened was deadly or non-deadly. (See CJI 2d 7.17.)

Where there is a claim of self-defense the officer should determine if there is probable cause to believe that the party was acting in lawful self-defense or in lawful defense of another by considering:

- the size, strength and bulk of the parties;
- the apparent ability of each party to do what was alleged;
- witness statements (including children);
- offensive and defensive wounds (look particularly for injuries that are inconsistent with one party's story of how the injury was inflicted);
- any history of domestic violence between the individuals; and
- other evidence (e.g. physical and circumstantial).

DOCUMENTING A DETERMINATION OF SELF-DEFENSE: Officers who determine that a party was acting in self-defense or in lawful defense of another must carefully document the reasons for their finding in their domestic relationship incident report form. Effective documentation includes a description of gestures, tone of voice, body positioning, prior incidents, and any other factors that support the finding of self-defense.

INTERVIEW TIP: To determine whether or not an individual was acting in self-defense, consider the situation from that person's perspective. Ask questions such as these: What did you think was going to happen? Why did you believe that?

6. A determination by the responding officer that each party has committed assaults against the other and neither was acting in self-defense must not automatically lead to dual arrests.

EXAMPLE OF "DEFENSIVE WOUNDS": While the assailant has the victim in a choke-hold from behind-arm around the neck of the victim-the victim bites the assailant on the inner, upper arm to get the assailant to release the victim.

NOTE: Officers must investigate the nature and circumstances surrounding an injury. The nature and severity of the injury must be compared with the information about the incident provided by the assailant, victim and witnesses to determine if it is an offensive or defensive wound.

When the officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, other individuals who reside together or formerly resided together or individuals who have or have had a dating relationship are committing or have committed crimes against each other, the officer, **when determining whether to make an arrest of one or both individuals**, should consider

- the intent of the law to protect victims of domestic violence. (MCL 776.22);
- the degree of injury inflicted on the individuals involved;
- the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household; and
- any history of domestic violence between the individuals, if that history can reasonably be ascertained by the officer.

- Only in the rare cases where, after ruling out self defense and determining, through observation of these factors neither party is a victim of domestic violence, should a dual arrest be considered.

NOTES ON MUTUAL BATTERING: An officer should not avoid conducting a thorough criminal investigation by simply arresting both parties where there are allegations of mutual battering.

MCL 776.22 explicitly provides that it is the intent of the law to protect victims of domestic violence and directs officers to consider a number of factors when faced with allegations of mutual battering to determine who should be arrested (Appendix J).

H. ARREST A DOMESTIC VIOLENCE ASSAILANT AFTER ESTABLISHING PROBABLE CAUSE THAT A CRIME HAS BEEN COMMITTED

1. Effect an arrest when the assailant is present.

- a. Arrest and handcuff the assailant, preferably outside the presence of the victim in order to avoid the victim's feeling compelled to intervene and defend the assailant. The assailant should be given *Miranda* warnings if custodial interrogation is going to be conducted.

REMINDER: *Miranda* is not required for transport and processing, only for interrogation.

- b. Inform the assailant that the decision to arrest and prosecute is being made by the officer, not the victim, stressing that the victim is not responsible for having the assailant arrested.
- c. Inform the assailant of release procedures for domestic assault and battery or domestic aggravated assault: no release until a judge or magistrate sets bond (making it clear that the victim can do nothing to speed up the bonding process):

NOTE: When there is evidence of a domestic assault, officers should not lodge under a related misdemeanor—the assailant should be lodged for domestic assault in order to bring the exception to the interim bond statute into play.

- d. Secure the arrested assailant in the patrol car.

NOTE: For repeat offenders, state statutes (not local ordinances) should be used for assault, assault and battery, and aggravated assault in order to get enhanced penalties (see chapter 2.B) For first time offenders, if a local ordinance for A&B is used, the ordinance should carry a 93-day penalty so that the conviction will appear on the assailant's criminal history.

2. Respond proactively when the assailant is not present.

In a case where the assailant has fled the scene of domestic violence, the risk is high that the assailant will return. Steps need to be taken to make an arrest and ensure the safety of the victim.

- a. Assist victim in determining if it is safe to remain on the premises.
- b. Attempt to provide assistance to the victim in relocating if necessary.
- c. Attempt to locate and arrest the assailant.
 - 1) If necessary, issue an “Attempt to Locate” bulletin for the assailant.
 - 2) Attempt to gather information on places the assailant is likely to go.
 - 3) Attempt to obtain a picture of the assailant and distribute it to other officers.
 - 4) Pass information on to other officers and shifts.
- d. Seek a warrant for the assailant’s arrest when the assailant cannot be located.

<p>NOTE: Officers should check with their department for the county’s procedures for obtaining a warrant.</p>
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I. ARREST THE RESPONDENT AFTER ESTABLISHING THAT A MICHIGAN PERSONAL PROTECTION ORDER (PPO) HAS BEEN VIOLATED

- 1. Ask the victim if a Personal Protection Order (PPO) has been issued against the assailant.**
- 2. Take specific action to verify the validity of the PPO:**
 - a. verify the PPO through the LEIN, or
 - b. see a true copy of the PPO provided by the victim.

<p>NOTE: During business hours the issuing court can verify the validity of a PPO if it is not yet entered into the LEIN and the victim does not have a true copy.</p>

- 3. Review conduct restrained or enjoined to help in the probable cause determination.**
- 4. Determine if the respondent has been served:**
 - a. verify the service via the LEIN (scan line 69), or
 - b. see a copy of the proof of service.
- 5. If the respondent has been served, a police officer *should* arrest if probable cause exists to believe that certain factors are in place:**
 - a. a domestic relationship PPO or non-domestic stalking PPO exists;
 - b. the PPO states on its face that violation subjects the violator to immediate arrest and criminal contempt punishable by not more than 93 days and/or a fine of not more than \$500; and
 - c. the assailant has violated or is violating the PPO by engaging in or having engaged in the conduct restrained or enjoined by the PPO (MCL 764.15b(1)).

6. If the assailant has not been served, officers responding to a call alleging a violation of a PPO *shall* take certain actions:

- a. serve the respondent with a true copy of the PPO; or
- b. provide the respondent actual notice of the:
 - 1) existence of the PPO;
 - 2) specific conduct enjoined;
 - 3) penalties for violating the PPO; and
 - 4) location where the respondent may obtain a copy of the order;
- c. immediately cause to be entered into the LEIN that the respondent has received actual notice of the PPO;
- d. complete a proof of service form or proof of oral notice form and provide a copy to:
 - 1) the law enforcement agency that entered the PPO into the LEIN; and
 - 2) the circuit court that issued the PPO.
 - It is also good practice to provide the petitioner with a copy of the proof of service or proof of oral service.
- e. give the respondent an opportunity to comply with the PPO.

If the respondent does not immediately comply with the terms of the PPO, a custodial arrest should be made as detailed in section I.4 above.

- When investigating a domestic relationship PPO violation, complete the standard domestic relationship incident report form, or a substantially similar form, and provide the report to the prosecutor within 48 hours.

7. Always conduct a thorough criminal investigation.

Always conduct a thorough criminal investigation even when there is an alleged violation of a PPO to determine if there also was a violation of any criminal law.

Arrest for a violation of a PPO does not preclude arrest for the violation of any criminal law.

Upon arrest for a PPO violation, take the respondent's fingerprints and forward them to MSP within 72 hours of the arrest.

8. Respond proactively when the respondent is not present and an arrest cannot be made:

- a. determine if it is safe for the victim to remain on the premises;
- b. provide assistance to the victim in relocating, if necessary, and advise the victim to go to court and file a motion for a show cause hearing;
- c. attempt to locate and arrest the respondent and issue a bulletin to attempt to locate the respondent;
- d. seek a warrant for any crime committed in addition to violating the PPO;
- e. always consider whether stalking or aggravated stalking has been committed;

J. ARREST THE RESPONDENT AFTER ESTABLISHING THAT A FOREIGN PROTECTION ORDER (FPO) HAS BEEN VIOLATED

NOTE: A “foreign” protection order is an injunction or other protective order issued by a court of another state, Indian tribe or US territory, NOT another country.

1. Purposes of the Federal Violence Against Women Act (VAWA) Full Faith & Credit Provisions are to:

- a. provide safety across state borders to victims;
- b. recognize and reduce the danger when abusers pursue victims across state and tribal lines; and
 - ensure that victims are entitled to safety and enforcement of protection orders wherever they travel, reside or work.

2. VAWA Full Faith & Credit Requirements

- a. All states, Indian tribes and US territories shall recognize and enforce the valid protection orders of other states, Indian tribes and US territories, as if the orders were the orders of the enforcing state, Indian tribe or US territory.
- b. In Michigan, enforce the orders of other states, Indian tribes and US territories as if the orders were issued in Michigan (state courts).

3. Facial Validity: Enforcement of the FPO if the law enforcement officer is shown a copy of the order:

A law enforcement officer may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the officer from any source, if the order appears to contain all of the following:

- 1) the names of the parties;
 - 2) the date the protection order was issued, which is prior to the date when enforcement is sought;
 - 3) terms and conditions against respondent;
 - 4) name of issuing court;
 - 5) signature of or on behalf of judicial officer; and
 - 6) no obvious indication that the order is not valid, such as an expiration date which is prior to the date enforcement is sought.
- b. The fact that a foreign protection order that an officer has been shown can not be verified in LEIN or NCIC is not grounds for an officer to refuse to enforce the order, unless it is apparent to the officer that the order is invalid.
- c. The officer may rely only on the statement of the petitioner that the order shown to the officer remains in effect.
- d. The officer may rely only on the statement of the petitioner or respondent that respondent has received notice of the order.
- **Enforcement if petitioner does not have a copy of the order:**
 - a. If a person seeking enforcement of a foreign protection order does not have a copy of the order, the officer shall attempt to verify through:
 - LEIN
 - NCIC
 - Administrative message
 - Contacting the court that issued the order
 - Contacting law enforcement in the issuing jurisdiction

- Contacting the issuing jurisdiction's protection order registry
- Any other method the officer believes to be reliable

MUTUAL ORDERS

If the order is a "mutual" order which restrains both the petitioner and the respondent and the parties have a domestic relationship:

- a. **enforce the order against the respondent;**
- b. **do not enforce the order against the petitioner unless:**
 - 1) **the order includes specific findings against the petitioner; and**
 - 2) **it is clear from the order that respondent filed a cross or counter petition.**

5. Law enforcement responsibilities when enforcing foreign protection orders include:

- b. Upon arrest, officers must take violator's fingerprints and forward prints to the Michigan State Police within 72 hours of arrest.
- b. MSP must maintain findings of criminal contempt for violations of PPOs and for violations of foreign protection orders in Michigan in respondent's criminal history.
- c. A person who refuses to allow or resists taking fingerprints is guilty of a misdemeanor punishable by imprisonment for not more than 90 days and/or \$500. (Appendix A-2).
- d. Law enforcement officers must complete the standard domestic relationship incident report form, or a substantially similar form, when investigating a foreign protection order violation.

- e. Law enforcement officers and courts must follow Michigan's PPO enforcement procedures for violations of foreign protection orders in Michigan.
- f. Michigan PPO penalties, including reimbursement for enforcement expenses, apply to violations of foreign protection orders in Michigan.

6. Good Faith Immunity for Law Enforcement

- a. Law enforcement officers, prosecutors, or court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order.
- b. This immunity does not in any manner limit or imply absence of immunity in other circumstances.

NOTE ON NEW MISDEMEANOR OFFENSE: A person who violates a foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$500, or both. (MCL 600.2950m).

NOTE ON VIOLATIONS OF STATE OR FEDERAL CRIMINAL LAWS: When enforcing a foreign protection order, the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties imposed for a violation of the foreign protection order may be imposed in addition to any penalty that may be imposed for any criminal offense arising from the same conduct. Officers should be particularly alert for violations of federal criminal law, such as interstate domestic violence and interstate violations of a protection order, when investigating foreign protection order violations. See Section 2.B.1.z.

K. ARREST A DEFENDANT AFTER ESTABLISHING THAT A MICHIGAN PROTECTIVE CONDITIONAL RELEASE ORDER (CONDITIONAL BOND) HAS BEEN VIOLATED

- 1. Determine that the assailant has been released on conditional bond via the LEIN.**

(See sample conditional bond form.)

- 2. Arrest the assailant when there is probable cause to believe the assailant is violating or has violated a provision of a conditional release order (conditional bond).**
- 3. Prepare a “complaint of violation of conditional release” pursuant to MCL 764.15e that contains specific items of information.**

(See sample complaint of violation of conditional release.)

- officer’s name and badge number;
- statement of verification;
- statement of conditions;
- statement of probable cause that assailant violated the conditions; and
- determine the court that imposed the conditions of release.

208

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

V

Plaintiff,

No.
HON.

Defendant,

COMPLAINT OF VIOLATION OF CONDITIONAL RELEASE

I, _____, am a peace officer. I have determined by:
[print or type name & badge no.]

___ L.E.I.N. and verification with the police agency holding the order
___ Certified or true copy of order
___ Other [Describe] _____

That _____ released _____
[court] [name of defendant]
subject to the following conditions [state or attach a statement of relevant conditions]

I have reasonable cause to believe that on _____ at _____ the defendant
[date] [time]
violated those conditions as follows: [state violations]

[signature]

[law enforcement agency]

[date]

4. Take certain appropriate actions.

- a. If the arrest occurred within the jurisdiction of the court that imposed the conditions of release, the officer shall:
 - 1) immediately provide the original and one copy of the complaint to that court;
 - 2) immediately provide one copy of the complaint to the assailant and one copy to the prosecuting attorney for the case in which the conditional release was granted;
 - 3) retain one copy of the complaint; and
 - 4) bring the assailant before that court within one business day following the arrest; or
- b. If the arrest occurred outside the jurisdiction of the court that imposed the conditions of release, the officer shall:
 - 1) immediately provide the original and one copy of the complaint to the district or municipal court where the violation occurred;
 - 2) immediately provide one copy of the complaint to the assailant;
 - 3) retain one copy of the complaint;
 - 4) bring the assailant before the district or municipal court where the violation occurred within one business day following the arrest; and
 - 5) identify the importance of documenting lethality factors in the officer's written report in order for the arresting agency, or officer in charge of the jail to determine if it is safe to release the assailant prior to being brought before the court.

5. Prepare a complete written report using the standard form.

Officers must fully document the results of their investigation. This helps to ensure an appropriate and safe decision is made about the release of the assailant. The judge or magistrate may set a conditional or high cash bond for offenders who pose a continuing danger. Therefore, all risk factors identified during the investigation must be documented in the written report.

PROBATION ORDER VIOLATIONS:

Law enforcement officers have warrantless arrest authority for probation violations, based upon probable cause, but there are no statutory procedures. Law enforcement agencies should work with their local prosecutor, courts, and probation officers to develop local procedures following warrantless arrests for probation order violations.

FOREIGN PROTECTION ORDERS THAT ARE CONDITIONAL RELEASE OR PROBATION ORDERS

- Determine that the defendant has been released by the criminal court of another state, tribe, or US territory on a conditional bond or probation order that is a protection order prohibiting violent or threatening acts, harassment, contact, communication or physical proximity to another person.
- Follow procedures regarding facial validity or verification through NCIC or other means.
- Arrest the defendant when there is probable cause to believe defendant is violating or has violated in Michigan a provision of a foreign protection order that is a conditional release (bond) or probation order.
- A violation in Michigan of a foreign protection order that is a conditional release (bond) or probation order is a 93-day misdemeanor. (MCL 600.2950(m)).

L. COLLECT EVIDENCE AND COMPLETE THE CRIMINAL INVESTIGATION AT THE DOMESTIC VIOLENCE SCENE

1. Collect any other additional information.

- a. The officer **interviews other witnesses** (e.g., other adults and children in the residence, neighbors, complainant, etc.).
 - 1) Witnesses should be interviewed outside the immediate presence of the victim and assailant.
 - 2) The physical location of witnesses during the incident should be established.
 - 3) Witnesses should be asked about what they specifically observed.
 - 4) Witnesses should be asked if they know of a history of violence between the victim and assailant.
 - 5) Witnesses should be asked if they know of the presence of any weapons in the household.
 - 6) Children should be interviewed gently, with the nature and length of the interview depending on the child's age and development.
 - 7) All statements made by a child—even a short statement like “Daddy hit Mommy”—should be recorded.
 - 8) The location, demeanor and emotional state of the children should be documented.
- b. The officer should **prepare to write a complete report using the standard domestic relationship incident report form, or a substantially similar form, by documenting in the field notes** any conditions at the scene, taking special notice of certain items, such as:
 - 1) the demeanor of victim, assailant, children & other witnesses;
 - 2) the condition of victim, assailant, children and other witnesses;
 - 3) spontaneous statements (excited utterances);
 - 4) any torn clothing;
 - 5) smeared makeup;

- 6) any evidence of injuries, with a diagram; and
- 7) indications of strangulation (e.g., red marks, difficulty breathing or swallowing, horse speech);
- 8) referral(s) to victim services agencies and any contacts the officer makes with the referral agencies.

In addition, the officer should document the location, demeanor and emotional state of the children.

2. Look for, collect and document evidence of a crime.

Officers should proceed with the crime scene investigation just as they would for any other crime.

- a. Note (sketch) the condition of the crime scene (e.g., disarray or damage to the physical surroundings).
- b. Document the crime scene through photography or videotape, if available.
- c. Collect and tag as evidence firearms, other weapons and/or other objects used as weapons.

<p>NOTE: A photograph of children and the victim at the scene can serve as strong evidence at trial even if the victim is unavailable or unwilling to participate in prosecution.</p>
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- d. Photograph the victim's, assailant's and/or children's injuries. Photograph the children and the victim at the scene and arrange for additional photographs to be taken two to three days later when bruises will be more developed. Bruises can appear up to 20 days after the trauma.
- e. Seize and/or photograph other evidence of violence, such as broken dishes and furniture, damage to walls, doors, windows, phone torn from wall, etc.
- f. Request 911 or dispatch audio tapes be held as evidence.
- g. Request hospital/medical reports when applicable (officers may need to obtain a release from the victim to obtain these).

3. Conduct a lethality assessment considering specific indicators.

Officers must conduct a lethality assessment and note findings to ensure that all relevant information will be available to those who will need to determine if it is safe to release the assailant and to set conditions of release (conditional bond).

NOTE: Also see chapter 1, section H.

- a. An assessment of potential lethality must be conducted for each domestic violence response, **even when officers have returned to the same household more than once**. Circumstances change—officers must realize that an assailant who stopped short of trying to kill a partner in the past may escalate the violence to the point of lethality over time or in certain situations.
- b. An assessment of potential lethality must be conducted **even when the assailant has already left the scene**. The assailant knows the victim and can predict the victim's whereabouts and the whereabouts of the victim's family. Therefore, the assailant can easily stalk the victim and wait for an opportunity to strike.
- c. Although there is no unfailing method for determining if a particular assailant will try to kill a particular victim in a given situation, there are a number of indicators to help in the assessment. Officers may gauge the degree of lethality by being conscious of multiple indicators present in a particular situation and/or the level of intensity of the indicators.
 - 1) The following is a list of indicators of a potential life-threatening attack by the assailant.
 - a) The **victim has left the relationship** or the assailant has discovered the victim wants to leave or file for separation or divorce.
 - b) **Weapons are present**. If assailants possess weapons, especially guns, and have used or have threatened to use them against victims, other family members or themselves, this is a strong indication that they will attempt to do so. If the assailant has a **history of arson**, or the threat of arson, it is a strong indicator of lethality.
 - c) The assailant has **threatened to kill**. Assailants' threats to kill their victims, other family members or themselves must be taken very seriously. Fantasies of either homicide or suicide must also be taken seriously.
 - d) The assailant has easy **access to the victim** and/or the victim's family.
 - e) A **history of prior calls** to police can help determine lethality. A prior history can give officers information as to the previous severity of violence

shown by a particular assailant. A history of prior calls may also be an indicator of the potential severity of violence in and of itself—assailants often escalate the level of violence with repeated occurrences over time.

- f) If the assailant and victim are separated, **stalking behavior** may be an indication that the assailant is willing to engage in life-threatening behavior. This is especially true if the assailant has made threats or has expressed the sentiment, “If I can’t have you, no one will.”
 - g) The assailant has **hurt or threatened the children**.
 - h) The assailant has **threatened to take the victim hostage**.
 - i) The assailant has **killed or mutilated a pet**. Pets are often killed by domestic violence assailants in order to make themselves appear capable of killing and to back up their death threats against people.
 - j) The assailant has a **history of assaultive behavior** against others.
 - k) The assailant has a **history of weapons use**.
 - l) The assailant has **threatened suicide** or has been acutely depressed.
 - m) The assailant has an **alcohol and/or drug addiction**.
- 2) Officers need to be sure that all parties are safe. In keeping with this responsibility, officers need to assess the lethality of the scene by using the information provided here and by asking questions such as:
- a) Has the assailant threatened to kill:
 - the victim?
 - the children?
 - family?
 - self?

NOTE: If the victim says that the assailant has threatened to kill, the victim’s word <i>must</i> be taken seriously.
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- b) Does the assailant know the victim wants to leave or file for divorce?
- c) How easy is the assailant’s access to the victim? the victim’s family? the victim’s friends?
- d) Are weapons present?

- e) Is there a history of prior calls?
- f) Has the assailant stalked the victim?
- g) Has the assailant threatened to kidnap or take the victim hostage?
- h) Has the assailant threatened to mutilate or kill pets?
- i) Does the assailant have a history of violence?
- j) Does the assailant have a history of weapons usage?
- k) Does the assailant have a drug or alcohol addiction?

4. Children

a. Crimes committed against children:

Officers should determine whether the abuser has committed any crimes against children (such as child abuse or assault/battery). Officers should document thoroughly the information in the incident report and request criminal charges against the abuser for these crimes against children. The documentation and criminal charges regarding crimes against children assist courts to enter appropriate orders for the safety of the children and non-offending parent. Children are best protected when the abuser is held accountable for abuse against the children and the non-offending parent.

b. Children witnessing domestic violence:

Officers should not automatically contact child protective services when children are present at a domestic violence incident.

Guidelines for CPS involvement provide:

*“A complaint that alleges domestic violence must include information indicating that the domestic violence is causing harm or threatened harm to a child in order to meet statutory parameters for CPS involvement. **A domestic violence complaint when a child is present and safe, in which to only allegation is domestic violence, is not a sufficient basis for accepting a complaint for investigation.** The alleged harm to the children is the criterion used to determine whether the complaint will be accepted or not. CFP 711-3, p.2 (5-1-02).*

There are unintended and harmful consequences resulting from automatic referrals to CPS for children witnessing domestic violence, which include:

- deterring children and victims from contacting law enforcement for protection;
- shifting blame for the abuse to the non-offending parent; and
- undermining the goals of providing safety and stability for children and victims, and accountability for the abuser.

M. PROVIDE APPROPRIATE ASSISTANCE TO THE DOMESTIC VIOLENCE VICTIM WHEN AN ARREST HAS BEEN MADE

- 1. Provide victims the written notice required by MCL 764.15c which must include the following:**
 - a. name and telephone number of the responding police agency;
 - b. name and badge number of the responding officer; and
 - c. a prescribed statement informing the victim of the:
 - 1) right to obtain a copy of the police incident report;
 - 2) right to go to court and file a petition requesting a Personal Protection Order (PPO); and
 - 3) local domestic violence shelter program and other resources that provide victims information about services and legal rights.

MCL 764.15c

The text of statute MCL 764.15c (MSA 28.874(3)) is provided here for your convenience:

After investigating or intervening in a domestic violence incident, a peace officer shall provide the victim with a copy of the notice in this section. The notice shall be written and shall include all of the following:

- (a) The name and telephone number of the responding police agency.**
- (b) The name and badge number of the responding peace officer.**
- (c) Substantially the following statement:**

“You may obtain a copy of the police incident report for your case by contacting this law enforcement agency at the telephone number provided.

The domestic violence shelter program and other resources in your area are (include local information).

Information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from these resources.

Your legal rights include the right to go to court and file a petition requesting a personal protection order to protect you or other members of your household from domestic abuse which could include restraining or enjoining the abuser from doing the following:

- (a) Entering onto premises.**
- (b) Assaulting, attacking, beating, molesting, or wounding you.**
- (c) Threatening to kill or physically injure you or another person.**
- (d) Removing minor children from you, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.**
- (e) Engaging in stalking behavior.**
- (f) Purchasing or possessing a firearm.**
- (g) Interfering with your efforts to remove your children or personal property from premises that are solely owned or leased by the abuser.**
- (h) Interfering with you at your place of employment or education or engaging in conduct that impairs your employment relationship or your employment or educational environment.**
- (i) Engaging in any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence.**
- (j) Having access to information in records concerning any minor child you have with the abuser that would inform the abuser about your address or telephone number, the child's address or telephone number, or your employment address.**

Your legal rights also include the right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated a personal protection order and has not been arrested.”

NOTE: Ask about these information sheets (above) at your department. Most departments or counties provide officers with preprinted information.

This written information must be provided whenever an officer responds to an allegation of:

- any crime;
- a PPO violation; or
- a FPO violation

if the alleged perpetrator and the alleged victim have a domestic relationship, regardless if an arrest is made.

2. Assist the victim in obtaining medical assistance.

Officers are required to assist the victim in obtaining medical assistance in accordance with departmental policy.

- a. It is important for officers to recommend and encourage medical treatment even if the victim does not feel that emergency medical assistance is necessary. Officers should advise the victim that medical records can become an important source document.
 - 1) Remind the victim that injuries are often not readily apparent, especially right after physical trauma, and may not be visible to the officers at the scene.
 - 2) Advise the victim that a medical facility is better able to document injuries that are not visible to the officer.
- b. Officers should be aware that domestic violence service provider agencies may provide or arrange for emergency medical assistance to the victims. Advise the victim of this resource when it is appropriate and available.

3. Assist the victim and the children with transportation.

- a. Officers should tell the victim that the assailant will be held until bond is set by a judge or magistrate and that this could occur anytime within the next 48 hours.
- b. Officers should offer to assist the victim and the children with transportation to a safe place (perhaps a shelter or friend's home) in a manner that is consistent with departmental policy.
- c. Officers should put the victim in contact with the local domestic violence service program where a safety plan can be discussed.

NOTE: At a domestic violence scene, consider dialing the local domestic violence service program and handing the phone to the victim. Many departments have adopted this procedure, and officers routinely call the local domestic violence service program, give their names and then hand the telephone to the victim.

- d. Officers should encourage the victim to call the police again if the need arises.

If the victim decides to stay, officers should not become judgmental or discount the violence. There are many reasons the victim may choose to stay, and only the victim can make this decision.

NOTE: see section F in chapter 1.

NOTE: If the assailant was not at the scene and could not be arrested, officers should remain at the scene while the victim collects essential property such as clothes and medicine in preparation for leaving. However, even when the assailant has been arrested, it may be in the victim's best interest to leave, and officers may be able to assist.

4. Provide the victim with the information required by the Crime Victim's Rights Act (MCL 780.753):
- a. availability of emergency and medical services, if applicable;
 - b. availability of victim's compensation benefits and the address of the crime victim's compensation board;
 - c. address and phone number of the prosecuting attorney; and
 - d. required statement regarding information on the status of the case.

NOTE: The Crime Victim's Rights Act is also covered in section M of chapter 2.

N. SECURE A DOMESTIC VIOLENCE SCENE WHEN AN ARREST CANNOT BE MADE

1. Create a calm atmosphere at the scene before leaving.

- a. Officers should attempt to ensure that the potential for violence has been de-escalated.
- b. Officers might suggest that one party leave for a period of time (if both are present).
- c. Officers should put the victim in contact with the local domestic violence service program.

NOTE: Officers may consider dialing the local domestic violence service program and handing the phone to the victim. Many departments have adopted this procedure, and officers routinely call the local service program, give

- d. Officers should remain at the scene until the situation is under control.

NOTE: The responsibility of the officer to the victim is often the same *even when no arrest can be made*. In fact, when an arrest cannot be made, officers must often help the victim to exercise additional caution because the violence of the situation may escalate once the police have left the scene.

NOTE: This section assumes no arrest can be made either because the assailant was not present or no probable cause of a crime, violation of a PPO or FPO or violation of a condition of release could be established.

2. Assess the lethality of the scene.

Officers need to be sure that all parties are safe. In keeping with this responsibility, officers need to assess the lethality at the scene by using the information provided in chapter 3, section K.

NOTE: For additional discussion of lethality see chapter 1, section H.

NOTE: Extraordinary measures should be taken to protect the victim and children if officers determine that an assailant is likely to kill or commit life-endangering violence. Such measures might include providing transportation and conducting meticulous follow-up. Officers should warn the victim of indicators that may mean the assailant is contemplating homicide. The victim should be advised to immediately take self-protective action and to contact the local domestic violence service program to obtain assistance in further assessing lethality and developing a safety plan. (“Assessing Whether Batterers Will Kill”)

3. Officers must attempt to ensure the safety of all parties.
4. Provide the victim the written notice required by MCL 764.15c even when an arrest cannot be made:

The written notice must include the following.

- a. name and telephone number of the responding police agency;
- b. name and badge number of the responding officer; and
- c. a prescribed statement informing the victim of the:
 - 1) right to obtain a copy of the police incident report;
 - 2) right to go to court and file a petition requesting a Personal Protection Order (PPO); and
 - 3) local domestic violence shelter program and other resources that provide victims information about services and legal rights.

NOTE: MCL 764.15c requires officers to distribute the domestic violence victim’s rights information whenever responding to a domestic violence incident. A “domestic violence incident” means allegations of any crime, a PPO or FPO violation, where the alleged perpetrator and victim have a domestic relationship (e.g., spouses, former spouses, current or former residents of the same household, having had a child in common, current or former dating relationship).

5. Document all domestic violence responses.

Officers are required by law to prepare a written report when responding to a domestic violence incident, as defined above, even if an arrest was not made. The report should include the reason an arrest was not made. The report must be made using the standard domestic relationship incident report form designed by MSP, or a substantially similar form.

Importance of documenting all responses:

- a. provides information to the next officer who responds;
- b. increases safety for officers by providing information;
- c. provides necessary documentation to other components of the criminal justice system; and
- d. may later result in additional information that will help in establishing probable cause that a crime was committed.

NOTE: Detailed information about documenting the domestic violence scene is provided in the next section of this chapter.
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NOTE: Since domestic violence is not a single, isolated incident, but a pattern of behavior, documentation of all responses can be helpful to those responding and investigating in the future.
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6. Provide protection while the victim prepares to leave.

If the victim desires to leave, officers should:

- a. remain at the scene to provide protection while the victim collects essential property (e.g., clothes, medicine, etc.) in preparation for leaving.
- b. put the victim in contact with the local domestic violence service program.
- c. encourage the victim to call the police again if needed—especially if the assailant follows (possibility of stalking) or tries to contact the victim.

7. **Assist the victim and children with transportation when it is consistent with departmental policy.**
 - a. Officers should assist the victim and children with transportation to a safe place such as a shelter or friend's home, when it is consistent with departmental policy.
 - b. Officers should document who was transported.
 - c. Officers should document the transportation destination, but this information **must remain confidential**. The location of the victim must not be given out by the desk officer or dispatcher.
8. **Even if the parties do not have a domestic relationship, the officer is authorized to make a warrantless arrest based on probable cause to believe any felony has been committed or any misdemeanor punishable by more than 92 days has been committed. As of April 11, 2002, under state law, assault and battery is punishable by 93-days, even if the relationship between the parties is not domestic.**
9. **Remain at the scene while the suspect leaves when the suspect has no right to remain at the scene (e.g., dating relationship, suspect over stays parenting time, etc.).**

When the suspected assailant does not have a property interest at stake, and probable cause for arrest could not be established, the victim can make the suspect leave.

This might be the case, for example, in a dating relationship, a divorce, or when the victim has moved to a separate residence not jointly held with the suspect.

O. WRITE A DOMESTIC VIOLENCE REPORT DOCUMENTING THE DOMESTIC VIOLENCE INVESTIGATION

1. Write a report consistent with Michigan law (MCL 746.15c).

A written report documenting the police response is required by Michigan law (MCL 746.15c) where there are allegations that any crime was committed or that there are allegations that a PPO or FPO violation has occurred, and there is a domestic relationship between the alleged perpetrator and victim, regardless of whether an arrest was made. The standard domestic relationship incident report form, or a substantially similar form, must be used.

Field notes taken at the domestic violence scene should be used in preparation for writing the report. In addition to field notes, officers should prepare to write the domestic violence report by reviewing witness statements and sketches and diagrams.

NOTE: The peace officer shall prepare a domestic violence report after investigating or intervening in a domestic violence incident. "Domestic violence incident" means an incident reported to a law enforcement agency involving allegations of 1 or both of the following:

(i) A violation of a personal protection order issued under section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, or a violation of a valid foreign protection order.

(ii) A crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual who resides or has resided in the same household. MCL 764.15c(2)

NOTE: Effective October 1, 2002, law enforcement officers must use the standard domestic violence incident report form developed by MSP or a form substantially similar to that standard form to report domestic violence incidents. MCL 764.15c(2)

2. Document in the domestic violence written report all facts of the investigation, including:

- a. address, date, and time of the incident;
- b. name, address, home and work telephone numbers, race, sex, and date of birth of:
 - 1) victim;
 - 2) assailant; and
 - 3) witnesses, including children;
- c. information describing the assailant and whether there is a Personal Protection Order (PPO) or Foreign Protection Order (FPO) issued against the assailant;
- d. relationship of any witness to victim or assailant;
- e. name of the person who called the law enforcement agency;
- f. relationship of the victim and assailant;
- g. whether drug or alcohol use was involved and by whom;
- h. narrative about the incident and the scene, describing:
 - 1) the incident and how it took place;
 - 2) whether and how many times the assailant physically assaulted the victim;
 - 3) any weapon or object used;
 - 4) injuries sustained by the victim and how injuries were sustained;
 - 5) property damage;
 - 6) if the victim sought medical attention, information about transportation of the victim, admittance to the hospital or clinic for treatment, and name and telephone number of the attending physician;
 - 7) facts to support all elements of any offenses committed;
 - 8) all spontaneous statements (excited utterances) made at the scene, including statements or threats made that officers heard on approach or at the door prior to contact at the scene;
 - 9) a description of the demeanor and emotional state of the person making spontaneous statements and a note on how long after the event that the statements were made;
 - 10) documentation of evidence that was collected at the scene;

- 11) the rationale for the arrest or no arrest decision;
- 12) documentation that the victim was provided the written notice required;
- 13) documentation of referrals made; and
- 14) a second address and phone number for the victim which *must* remain confidential;
- 15) description of previous domestic violence incidents between assailant and victim, including out-of-state incidents, dates, and locations; and
- 16) date and time of the report, and name, badge number, and signature of the officer completing the report.

<p>NOTE that report writing is not being taught here. This information is intended to stress the proper documentation of the information and evidence important to domestic violence cases and required by MCL 746.15c.</p>
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3. Document any lethality factors identified that should be considered for purposes of conditional release (conditional bond).

An officer's report is the only means of communicating the dangerousness of an assailant to those who will decide if it is safe to release the assailant and with what conditions.

4. Write a supplement to the report, if new information becomes available.

5. Notify the Family Independence Agency's (FIA) Children's Protective Services (CPS) when there is evidence of child abuse.

When there is suspicion of child abuse, officers must:

- a. report it to the FIA immediately by phone; and
- b. follow up the verbal report with an FIA form 3200 to which a copy of the domestic violence police report has been attached.

SOURCES CITED CHAPTER 3

U.S. Attorney General's Task Force on Family Violence, *Final Report*, Sept. 1984.

"Assessing Whether Batterers Will Kill," from *General Information About Domestic Violence*, compiled by The Domestic Violence Project, Inc./SAFEHOUSE, Ann Arbor, 1992.

Table of Appendixes

A. Fingerprinting		
1. MCL 28.243[1] Fingerprinting upon arrest	.....	233
2. MCL 28.243a Misdemeanor Charges for Refusal	.....	237
B. Orders in LEIN, MCL 28.422b	.....	238
C. Personal Protection Orders and Enforcement of Foreign Protection Orders		
1. MCL 600.2950 Domestic Relations PPOs	.....	240
2. MCL 600.2950a Stalking PPOs	.....	246
3. MCL 600.2950h-m Full Faith & Credit for FPOs	.....	251
D. Selected Domestic Violence Criminal Offenses		
1. 750.81 Assault & Battery	.....	258
2. 750.81a Aggravated Assault	.....	260
3. 750.90a-g Assaults Against Pregnant Women	.....	261
4. 750.136b Child Abuse	.....	269
5. 750.350a Parental Kidnapping	.....	271
6. 750.142 Furnishing Obscene Materials to a Minor	.....	272
750.145c Child Sexually Abusive Activity	.....	273
750.145d Internet or Computer/Prohibited Communication	.....	277
7. 750.110a Home Invasion	.....	281
8. 750.411h Stalking	.....	282
750.411i Aggravated Stalking	.....	284
750.411s Communications Promoting Threatening Conduct	.....	287
752.796 Use of a Computer to Commit a Crime	.....	290
9. 750.520a Criminal Sexual Conduct definitions	.....	291
750.520b Criminal Sexual Conduct First Degree	.....	293
750.520c Criminal Sexual Conduct Second Degree	.....	295
750.520d Criminal Sexual Conduct Third Degree	.....	297
750.520e Criminal Sexual Conduct Fourth Degree	.....	298
10. 750.483a Report of Crime, Retaliate, Threaten or Intimidate	.....	300
750.122 Witnesses, Threaten or Intimidate	.....	302
11. 750.50 Animal Abuse	.....	304
750.52 Failure to Act on Complaint of Animal Abuse	.....	308
12. 750.540 Cutting Telephone Line, Wire or Cable	.....	309
E. Warrant Issuance by Magistrates, MCL 764.1a	.....	310
F. Arrest Powers, MCL 764.15, MCL 764.15a, MCL 764.15b, MCL 764.15e	.....	311

G. Implementation Memo and Standard Domestic Relationship Incident Form ...	319
H. Selected 92+ Day Misdemeanors	329
• Victims Rights Information and PCR requirements, MCL 764.15c	330
I. Information required to be given to victim, MCL 780.753	333
J. Court	
1. 764.29 Arraignment, Fingerprints	334
2. 765.6b Release, Protective conditions	335
3. 769.4a Deferral of Proceedings (pleas under advisement)	337
K. Police Domestic Violence Policies, MCL 776.22	339
L. Interim Bond (20 hour rule), MCL 780.582a, 780.581	341
M. Permissible Charter Provisions (Cities can make 93 day misdemeanors), MCL 117.4I	344

BUREAU OF CRIMINAL IDENTIFICATION AND RECORDS (EXCERPT)
Act 289 of 1925

28.243[1].amended Taking and forwarding fingerprints of person arrested; manner; destruction of fingerprints and arrest card; failure to destroy information; notice to commanding officer; right of accused to obtain court order; petition for mandamus; duties of clerk on final disposition of charge; contents of report; comparison of fingerprints and description with those on file; informing arresting agency and prosecuting attorney; applicability of provisions; prohibited conduct under subsection (5).

Sec. 3. (1) Except as provided in subsection (3), immediately upon the arrest of a person for a felony or for a misdemeanor violation of state law for which the maximum possible penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or both, or for criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, or for a juvenile offense, other than a juvenile offense for which the maximum possible penalty does not exceed 92 days' imprisonment or a fine of \$1,000.00, or both, the arresting law enforcement agency in this state shall take the person's fingerprints and forward the fingerprints to the department within 72 hours after the arrest. The fingerprints shall be sent to the department on forms furnished by or in a manner prescribed by the department, and the department shall forward the fingerprints to the director of the federal bureau of investigation on forms furnished by or in a manner prescribed by the director.

(2) A law enforcement agency shall take a person's fingerprints under this subsection if the person is arrested for a misdemeanor violation of state law for which the maximum penalty is 93 days or for criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, if the fingerprints have not previously been taken and forwarded to the department under subsection (1). A law enforcement agency shall take a person's fingerprints under this subsection if the person is arrested for a violation of a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible term of imprisonment is 93 days. If the person is convicted of any violation, the law enforcement agency shall take the person's fingerprints before sentencing if not previously taken. The court shall forward to the law enforcement agency a copy of the disposition of conviction, and the law enforcement agency shall forward the person's fingerprints and the copy of the disposition of conviction to the department within 72 hours after receiving the disposition of conviction in the same manner as provided in subsection (1). If the person is convicted of violating a local ordinance, the

law enforcement agency shall indicate on the form sent to the department the statutory citation for the state law to which the local ordinance substantially corresponds.

(3) A person's fingerprints are not required to be taken and forwarded to the department under subsection (1) or (2) solely because he or she has been convicted of violating section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

(4) The arresting law enforcement agency may take 1 set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than \$1,000.00, or both, and who fails to produce satisfactory evidence of identification as required by section 1 of 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded to the department immediately. Upon completion of the identification process by the department, the fingerprints shall be destroyed.

(5) An arresting law enforcement agency in this state may take the person's fingerprints on forms furnished by the commanding officer upon an arrest for a misdemeanor other than a misdemeanor described in subsection (1), (2), or (4), and may forward the fingerprints to the department.

(6) If a court orders the taking of fingerprints of a person pursuant to section 11 or 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of chapter IV or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 764.29 and 769.1, the law enforcement agency shall forward the fingerprints and arrest card to the department.

(7) If a petition is not authorized for a juvenile accused of a juvenile offense or if a person arrested for having committed a felony or a misdemeanor is released without a charge made against him or her, the official taking or holding the person's fingerprints and arrest card shall immediately destroy the fingerprints and arrest card. The law enforcement agency shall notify the department in writing that a petition was not authorized against the juvenile or that a charge was not made against the arrested person if the juvenile's or arrested person's fingerprints were forwarded to the department.

(8) If a juvenile is adjudicated and found not to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found not guilty of the offense, the fingerprints and the arrest card shall be destroyed by the official holding this information. If for any reason the official holding the information does not destroy the information within 60 days of the adjudication or the finding of not guilty, the accused or juvenile has the right to obtain an order from the court having jurisdiction over the case for the return of the information. If the order of return is not complied with, the accused or juvenile has the right to petition the family division of circuit court of the county where the original petition was filed or the circuit court of the county where the original charge was made for a preemptory writ of mandamus to require issuance of the order of return. Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall notify the department of any finding of not guilty or not guilty by reason of insanity, dismissal, or nolle prosequi, if it appears that the accused was initially fingerprinted for a felony or a misdemeanor or of any finding that a juvenile alleged responsible for a juvenile offense is not within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

- (9) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the department of the final disposition of the arrest for which the person was fingerprinted if a juvenile was adjudicated to have committed a juvenile offense or if the accused was convicted of a felony or a misdemeanor. With regard to any adjudication or conviction, the clerk shall transmit to the department information as to any adjudication or finding of guilty or guilty but mentally ill; any plea of guilty, nolo contendere, or guilty but mentally ill; the offense of which the accused was convicted; and a summary of any deposition or sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate: (a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
- (b) Sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15.
- (c) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (d) Section 350a(4) of the Michigan penal code, 1931 PA 328, MCL 750.350a.
- (10) The department shall record the disposition of each charge and shall inform the director of the federal bureau of investigation of the final disposition of the felony or misdemeanor arrest.
- (11) The department shall compare the fingerprints and description received with those already on file and if the department finds that the person arrested has a criminal record, the department shall immediately inform the arresting agency and prosecuting attorney of this fact.
- (12) The provisions of subsection (8) that require the destruction of the fingerprints and the arrest card do not apply to a person who was arraigned in circuit court or the family division of circuit court for any of the following: (a) The commission or attempted commission of a crime with or against a child under 16 years of age.
- (b) Rape.
- (c) Criminal sexual conduct in any degree.
- (d) Sodomy.
- (e) Gross indecency.
- (f) Indecent liberties.
- (g) Child abusive commercial activities.
- (h) A person who has a prior conviction, other than a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order on the record, orders the destruction or return of the fingerprints and arrest card.
- (i) A person arrested who is a juvenile charged with an offense that would constitute the commission or attempted commission of any of the crimes in this subsection if committed by an adult.
- (13) Subsection (5) does not permit the forwarding to the department of the fingerprints of a person accused and convicted under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act, unless the offense is punishable upon conviction by imprisonment for more than 92

days or is an offense that is punishable by imprisonment for more than 92 days upon a subsequent conviction.

History: 1925, Act 289, Imd. Eff. May 13, 1925 ;--Am. 1929, Act 197, Imd. Eff. May 20, 1929 ;--CL 1929, 569 ;--Am. 1931, Act 197, Imd. Eff. May 28, 1931 ;--Am. 1937, Act 205, Eff. Oct. 29, 1937 ;--CL 1948, 28.243 ;--Am. 1951, Act 99, Eff. Sept. 23, 1951 ;--Am. 1958, Act 92, Eff. Sept. 13, 1958 ;--Am. 1959, Act 176, Eff. Mar. 19, 1960 ;--Am. 1978, Act 538, Imd. Eff. Dec. 22, 1978 ;--Am. 1986, Act 231, Eff. June 1, 1987 ;--Am. 1988, Act 40, Eff. June 1, 1988 ;--Am. 1989, Act 97, Imd. Eff. June 21, 1989 ;--Am. 1999, Act 77, Eff. Oct. 1, 1999 ;--Am. 1999, Act 266, Imd. Eff. Dec. 29, 1999 ;--Am. 2001, Act 187, Eff. Apr. 1, 2002 ;--Am. 2001, Act 203, Eff. Oct. 1, 2002 .

BUREAU OF CRIMINAL IDENTIFICATION AND RECORDS (EXCERPT)
Act 289 of 1925

28.243a.amended Fingerprinting; refusal or resistance as misdemeanor.

Sec. 3a. (1) A person shall not refuse to allow or resist the taking of his or her fingerprints if authorized or required under this act.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

History: Add. 1968, Act 174, Eff. Nov. 15, 1968 ;--Am. 1986, Act 231, Eff. June 1, 1987 ;--Am. 2001, Act 187, Eff. Apr. 1, 2002 .

FIREARMS (EXCERPT)
Act 372 of 1927

28.422b.amended Entry of order or disposition into law enforcement information network; written notice; person subject of order; request to amend inaccuracy; notice of grant or denial of request; hearing; exemption from public disclosure; entry of personal protection order; service required.

Sec. 2b. (1) Except as provided in subsection (6), upon entry of an order or disposition into the law enforcement information network under any provision of law described in section 2(3)(a), the department of state police shall immediately send written notice of that entry to the person who is the subject of the order or disposition. The notice shall be sent by first-class mail to the last known address of the person. The notice shall include at least all of the following:

- (a) The name of the person.
- (b) The date the order or disposition was entered into the law enforcement information network.
- (c) A statement that the person cannot obtain a license to purchase a pistol or obtain a concealed weapon license until the order or disposition is removed from the law enforcement information network.
- (d) A statement that the person may request that the state police correct or expunge inaccurate information entered into the law enforcement information network.

(2) A person who is the subject of an order entered into the law enforcement information network under any provision of law described in section 2(3)(a) may request that the department of state police do either of the following:

- (a) Amend an inaccuracy in the information entered into the law enforcement information network under any provision of law described in section 2(3)(a).
- (b) Expunge the person's name and other information concerning the person from the law enforcement information network regarding 1 or more specific entries in the law enforcement information network under any provision of law described in section 2(3)(a) because 1 or more of the following circumstances exist:

- (i) The person is not subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- (ii) The person is not subject to an order or disposition determining that the person is legally incapacitated.
- (iii) The person is not subject to a personal protection order issued under any of the following:
 - (A) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.
 - (B) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

(C) Section 14 of 1846 RS 84, MCL 552.14.

(iv) The person is not subject to an order for release subject to protective conditions that prohibits the purchase or possession of a firearm by the person issued under section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(3) Before the expiration of 30 days after a request is made to amend an inaccuracy in the law enforcement information network under subsection (2)(a) or to expunge 1 or more specific entries from the law enforcement information network under subsection (2)(b)(i) to (iv), the department of state police shall conduct an investigation concerning the accuracy of the information contained in the law enforcement information network, either grant or deny the request and provide the person with written notice of that grant or denial. A notice of denial shall include a statement specifying the basis of the denial, and that a person may appeal the denial pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) If the department of state police refuses a request by a person for amendment or expunction under subsection (2), or fails to act within 30 days after receiving the request under subsection (2), the person may request a hearing before a hearing officer appointed by the department of state police for a determination of whether information entered into the law enforcement information network should be amended or expunged because it is inaccurate or false. The department of state police shall conduct the hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) Information contained in an order or disposition filed with the department of state police under any provision of law described in section 2(3)(a)(i) to (vii) is exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The department of state police shall not send written notice of an entry of an order or disposition into the law enforcement information network as required for a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, until that department has received notice that the respondent of the order has been served with or has received notice of the personal protection order.

History: Add. 1994, Act 338, Eff. Apr. 1, 1996 ;--Am. 2001, Act 199, Eff. Apr. 1, 2002 .

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2950.amended Personal protection order; restraining or enjoining spouse, former spouse, individual with child in common, individual in dating relationship, or person residing or having resided in same household from certain conduct; respondent required to carry concealed weapon; omitting address of residence from documents; issuance, contents, effectiveness, duration, and service of personal protection order; entering order into L.E.I.N.; notice; failure to comply with order; false statement to court; enforcement; minor; definitions.

Sec. 2950. (1) Except as provided in subsections (27) and (28), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following: (a) Entering onto premises.

(b) Assaulting, attacking, beating, molesting, or wounding a named individual.

(c) Threatening to kill or physically injure a named individual.

(d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(e) Purchasing or possessing a firearm.

(f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

(g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.

(h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.

(i) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her

employment, the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court with a mailing address.

(4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following: (a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

(5) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply: (a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(6) A court shall not refuse to issue a personal protection order solely due to the absence of any of the following: (a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(7) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(8) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court pursuant to subsection (1).

(9) A personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge. Upon service, a personal protection order may also be enforced by another state, an Indian tribe, or a territory of the United States.

(10) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(11) A personal protection order shall include all of the following, and to the extent practicable the following shall be contained in a single form: (a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following: (i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or

she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

(ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge, and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing the type or types of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.

(f) The law enforcement agency designated by the court to enter the personal protection order into the law enforcement information network.

(g) For ex parte orders, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order and that motion forms and filing instructions are available from the clerk of the court.

(12) An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

(14) Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a proof of service on the

- individual restrained or enjoined: (a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order. (b) Provide the petitioner with not less than 2 true copies of the personal protection order. (c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order. (d) If the personal protection order prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and contents of the personal protection order. (e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order. (f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.
- (16) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court in subsection (10) to be immediately entered into the law enforcement information network.
- (17) The law enforcement agency that receives a true copy of the personal protection order under subsection (15) or (16) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.
- (18) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (21) and (22).
- (19) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either of the following occurs: (a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

- (b) The personal protection order is rescinded, modified, or extended by court order.
- (20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.
- (21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.
- (22) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order shall be grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.
- (23) An individual who is 17 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided for under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct.
- (24) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.
- (25) A personal protection order issued under this section is also enforceable under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b.
- (26) A personal protection order issued under this section is also enforceable under chapter 17.

(27) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply: (a) The respondent is the unemancipated minor child of the petitioner.

(b) The petitioner is the unemancipated minor child of the respondent.

(c) The respondent is a minor child less than 10 years of age.

(28) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(29) A personal protection order that is issued prior to the effective date of the amendatory act that added this subsection is not invalid on the ground that it does not comply with 1 or more of the requirements added by this amendatory act.

(30) As used in this section: (a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(c) "Personal protection order" means an injunctive order issued by the circuit court or the family division of circuit court restraining or enjoining activity and individuals listed in subsection (1).

History: Add. 1983, Act 228, Imd. Eff. Nov. 28, 1983 ;--Am. 1994, Act 58, Eff. July 1, 1994 ;--Am. 1994, Act 61, Eff. July 1, 1994 ;--Am. 1994, Act 341, Eff. Apr. 1, 1996 ;--Am. 1994, Act 402, Eff. Apr. 1, 1995 ;--Am. 1996, Act 10, Eff. June 1, 1996 ;--Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997 ;--Am. 1998, Act 477, Eff. Mar. 1, 1999 ;--Am. 1999, Act 268, Eff. July 1, 2000 ;--Am. 2001, Act 200, Eff. Apr. 1, 2002 .

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2950a.amended Personal protection order restraining or enjoining individual from engaging in conduct prohibited under §§ 750.411h and 750.411i; facts alleging stalking; respondent required to carry concealed weapon; omitting address of residence from documents; reasons for issuing or refusing to grant order; mutual order prohibited; effectiveness, issuance, contents, and duration of order; duties of court clerk; entering order into L.E.I.N.; service; notice to law enforcement agency; enforcement; refusal or failure to comply; false statement to court; purchase or possession of firearm; minor; issuance to prisoner prohibited; definitions.

Sec. 2950a. (1) Except as provided in subsections (25) and (26), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief shall not be granted unless the petition alleges facts that constitute stalking as defined in section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief may be sought and granted under this section whether or not the individual to be restrained or enjoined has been charged or convicted under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i, for the alleged violation.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, a department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court a mailing address.

(4) If a court refuses to grant a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.

(5) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court according to subsection (1).

- (6) A personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge. Upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.
- (7) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the L.E.I.N.
- (8) A personal protection order issued under this section shall include all of the following, and to the extent practicable contained in a single form: (a) A statement that the personal protection order has been entered to enjoin or restrain conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following: (i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. (ii) If the respondent is less than 17 years of age, to immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. (iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.
- (b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge, and that upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.
- (c) A statement listing each type of conduct enjoined.
- (d) An expiration date stated clearly on the face of the order.
- (e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.
- (f) The law enforcement agency designated by the court to enter the personal protection order into the L.E.I.N.
- (g) For an ex parte order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the personal protection order and that motion forms and filing instructions are available from the clerk of the court.
- (9) An ex parte personal protection order shall not be issued and effective without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued.
- (10) A personal protection order issued under subsection (9) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual

notice of the personal protection order unless good cause is shown for filing the motion after 14 days have elapsed.

(11) Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

(12) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance without requiring proof of service on the individual restrained or enjoined: (a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide petitioner with not less than 2 true copies of the personal protection order.

(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency about the existence of the personal protection order.

(d) If the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and content of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

(13) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court in subsection (7) to be immediately entered into the L.E.I.N.

(14) The law enforcement agency that receives a true copy of the personal protection order under subsection (12) or (13) shall immediately, without requiring proof of service, enter the personal protection order into the L.E.I.N.

(15) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last

known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or immediate enforcement under subsection (18) or (19).

(16) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (12) or (13) if either of the following occurs: (a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(17) The law enforcement agency that receives information under subsection (16) shall enter the information or cause the information to be entered into the L.E.I.N.

(18) Subject to subsection (19), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the L.E.I.N.

(19) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the L.E.I.N. that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. Failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(20) An individual 17 years of age or more who refuses or fails to comply with a personal protection order issued under this section is subject to the criminal contempt powers of the court and, if found guilty of criminal contempt, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual less than 17 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

(21) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(22) A personal protection order issued under this section is also enforceable under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

(23) A personal protection order issued under this section may enjoin or restrain an individual from purchasing or possessing a firearm.

(24) A personal protection order issued under this section is also enforceable under chapter 17.

(25) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply: (a) The respondent is the unemancipated minor child of the petitioner.

(b) The petitioner is the unemancipated minor child of the respondent.

(c) The respondent is a minor child less than 10 years of age.

(26) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(27) A personal protection order that is issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 476.

(28) A court shall not issue a personal protection order under this section if the petitioner is a prisoner. If a personal protection order is issued in violation of this subsection, a court shall rescind the personal protection order upon notification and verification that the petitioner is a prisoner.

(29) As used in this section: (a) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(b) "L.E.I.N." means the law enforcement information network administered under the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(c) "Personal protection order" means an injunctive order issued by circuit court or the family division of circuit court restraining or enjoining conduct prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(d) "Prisoner" means a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.

History: Add. 1992, Act 262, Eff. Jan. 1, 1993 ;--Am. 1994, Act 61, Eff. July 1, 1994 ;--Am. 1994, Act 341, Eff. Apr. 1, 1996 ;--Am. 1994, Act 404, Eff. Apr. 1, 1995 ;--Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997 ;--Am. 1998, Act 476, Eff. Mar. 1, 1999 ;--Am. 1999, Act 268, Eff. July 1, 2000 ;--Am. 2001, Act 196, Eff. Apr. 1, 2002 ;--Am. 2001, Act 201, Eff. Apr. 1, 2002 .

600.2950h. "Foreign protection order"; "LEIN"; "NCIC protection order file"

Sec. 2950h. As used in this section and sections 2950i, 2950j, 2950k, 2950l, and 2950m:

- (a) "Foreign protection order" means an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. Foreign protection order includes temporary and final orders issued by civil and criminal courts (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other federal law), whether obtained by filing an independent action or by joining a claim to an action, if a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- (b) "LEIN" means the law enforcement information network regulated under the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.
- (c) "NCIC protection order file" means the national crime information center protection order file maintained by the United States department of justice, federal bureau of investigation.

600.2950i. Foreign protection orders; validity; affirmative defenses

Sec. 2950i. (1) A foreign protection order is valid if all of the following conditions are met:

(a) The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory.

(b) Reasonable notice and opportunity to be heard is given to the respondent sufficient to protect the respondent's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided to the respondent within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(2) All of the following may be affirmative defenses to any charge or process filed seeking enforcement of a foreign protection order:

(a) Lack of jurisdiction by the issuing court over the parties or subject matter.

(b) Failure to provide notice and opportunity to be heard.

(c) Lack of filing of a complaint, petition, or motion by or on behalf of a person seeking protection in a civil foreign protection order.

600.2950j. Foreign protection orders; full faith and credit; child custody or support provision

Sec. 2950j. (1) A valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as if it were issued in this state.

(2) A child custody or support provision within a valid foreign protection order shall be accorded full faith and credit by the court and shall be subject to the same enforcement procedures and penalties as any provision within a personal protection order issued in this state. This subsection shall not be construed to preclude law enforcement officers' compliance with the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

600.2950k. Foreign protection order sought against spouse or intimate partner; full faith and credit;

Sec. 2950k. (1) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is entitled to full faith and credit against the respondent and is enforceable against the respondent.

(2) A foreign protection order sought by a petitioner against a spouse or intimate partner and issued against both the petitioner and respondent is not entitled to full faith and credit and is not enforceable against the petitioner unless both of the following conditions are met:

(a) The respondent filed a cross- or counter-petition, complaint, or other written pleading seeking the foreign protection order.

(b) The issuing court made specific findings against both the petitioner and the respondent and determined that each party was entitled to relief.

(3) For purposes of this section, "spouse or intimate partner" means all of the following:

(a) Spouse.

(b) Former spouse.

(c) An individual with whom petitioner has had a child in common.

(d) An individual residing or having resided in the same household as petitioner.

(e) An individual with whom petitioner has or has had a dating relationship as that term is defined in section 2950.

600.2950l. Foreign protection orders; enforcement; service or notice; liability of law enforcement officer, prosecutor, or court personnel

Sec. 2950l. (1) Law enforcement officers, prosecutors, and the court shall enforce a foreign protection order other than a conditional release order or probation order issued by a court in a criminal proceeding in the same manner that they would enforce a personal protection order issued in this state under section 2950 or 2950a or section 2(h) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, unless indicated otherwise in this section.

(2) A foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding shall be enforced pursuant to section 2950m of this act, section 15(1)(g) of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15, the uniform criminal extradition act, 1937 PA 144, MCL 780.1 to 780.31, or the uniform rendition of accused persons act, 1968 PA 281, MCL 780.41 to 780.45.

(3) A law enforcement officer may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the law enforcement officer from any source if the putative foreign protection order appears to contain all of the following:

- (a) The names of the parties.
- (b) The date the protection order was issued, which is prior to the date when enforcement is sought.
- (c) The terms and conditions against respondent.
- (d) The name of the issuing court.
- (e) The signature of or on behalf of a judicial officer.
- (f) No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.

(4) The fact that a putative foreign protection order that an officer has been shown cannot be verified on L.E.I.N. or the NCIC national protection order file is not grounds for a law enforcement officer to refuse to enforce the terms of the putative foreign protection order, unless it is apparent to the officer that the putative foreign protection order is invalid. A law enforcement officer may rely upon the statement of petitioner that the putative foreign protection order that has been shown to the officer remains in effect and may rely upon the statement of petitioner or respondent that respondent has received notice of that order.

(5) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, the law enforcement officer shall attempt to verify through L.E.I.N., or the NCIC protection order file, administrative messaging, contacting the court that issued the foreign protection order, contacting the law enforcement agency in the issuing jurisdiction, contacting the issuing jurisdiction's protection order registry, or any other method the law enforcement officer believes to be reliable, the existence of the foreign protection order and all of the following:

- (a) The names of the parties.
- (b) The date the foreign protection order was issued, which is prior to the date when enforcement is sought.

- (c) Terms and conditions against respondent.
- (d) The name of the issuing court.
- (e) No obvious indication that the foreign protection order is invalid, such as an expiration date that is before the date enforcement is sought.
- (6) If subsection (5) applies, the law enforcement officer shall enforce the foreign protection order if the existence of the order and the information listed under subsection (5) are verified, subject to subsection (9).
- (7) If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, and the law enforcement officer cannot verify the order as described in subsection (5), the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law.
- (8) When enforcing a foreign protection order, the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties provided for under sections 2950 and 2950a and chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct.
- (9) If there is no evidence that the respondent has been served with or received notice of the foreign protection order, the law enforcement officer shall serve the respondent with a copy of the foreign protection order, or advise the respondent about the existence of the foreign protection order, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in this state, and, if the officer is aware of the penalties in the issuing jurisdiction, the penalties for violating the order in the issuing jurisdiction. The officer shall enforce the foreign protection order and shall provide the petitioner, or cause the petitioner to be provided, with proof of service or proof of oral notice. The officer also shall provide the issuing court, or cause the issuing court to be provided, with a proof of service or proof of oral notice, if the address of the issuing court is apparent on the face of the foreign protection order or otherwise is readily available to the officer. If the foreign protection order is entered into L.E.I.N. or the NCIC protection order file, the officer shall provide the L.E.I.N. or the NCIC protection order file entering agency, or cause the L.E.I.N. or NCIC protection order file entering agency to be provided, with a proof of service or proof of oral notice. If there is no evidence that the respondent has received notice of the foreign protection order, the respondent shall be given an opportunity to comply with the foreign protection order before the officer makes a custodial arrest for violation of the foreign protection order. The failure to comply immediately with the foreign protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the code of criminal procedure, 1927 PA 175, MCL 712A.14.
- (10) A law enforcement officer, prosecutor, or court personnel acting in good faith are immune from civil and criminal liability in any action arising from the enforcement of a foreign protection order. This immunity does not in any manner limit or imply an absence of immunity in other circumstances.

600.2950m. Foreign protection order that is conditional release order or probation order; violation

Sec. 2950m. A person who violates a foreign protection order that is a conditional release order or a probation order issued by a court in a criminal proceeding is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$500.00, or both.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.81.amended Assault and battery; penalties; applicability to individual using necessary reasonable physical force in compliance with § 380.1312; “dating relationship” defined.

Sec. 81. (1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3) or (4), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) An individual who commits an assault or an assault and battery in violation of subsection (2), and who has previously been convicted of assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, under any of the following, may be punished by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both: (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2), and who has 2 or more previous convictions for assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, under any of the following, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both: (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(6) As used in this section, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not

include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;--CL 1948, 75081 ;--Am. 1994, Act 64, Eff. July 1, 1994 ;--Am. 1999, Act 270, Eff. July 1, 2000 ;--Am. 2000, Act 462, Imd. Eff. Jan. 10, 2001 ;--Am. 2001, Act 189, Eff. Apr. 1, 2002 ;--Am. 2001, Act 190, Eff. Apr. 1, 2002 .

Former Law: See section 29 of Ch. 153 of R.S. 1846, being CL 1857, § 5739; CL 1871, § 7538; How., § 9103; CL 1897, § 11498; CL 1915, § 15220; CL 1929, § 16736; Act 167 of 1879; and Act 54 of 1929.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.81a.amended Assault; infliction of serious or aggravated injury; “dating relationship” defined.

Sec. 81a. (1) Except as otherwise provided in this section, a person who assaults an individual without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Except as provided in subsection (3), an individual who assaults his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of the same household without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) An individual who commits an assault and battery in violation of subsection (2), and who has 1 or more previous convictions for assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of the same household, in violation of any of the following, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both: (a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81, 82, 83, 84, or 86.

(4) As used in this section, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

History: Add. 1939, Act 237, Eff. Sept. 29, 1939 ;--CL 1948, 750.81a ;--Am. 1994, Act 65, Eff. July 1, 1994 ;--Am. 1999, Act 270, Eff. July 1, 2000 ;--Am. 2001, Act 190, Eff. Apr. 1, 2002 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90a.amended Conduct proscribed under §§ 750.81 to 750.89 as felony; intent.

Sec. 90a. If a person intentionally commits conduct proscribed under sections 81 to 89 against a pregnant individual, the person is guilty of a felony punishable by imprisonment for life or any term of years if all of the following apply: (a) The person intended to cause a miscarriage or stillbirth by that individual or death or great bodily harm to the embryo or fetus, or acted in wanton or willful disregard of the likelihood that the natural tendency of the person's conduct is to cause a miscarriage or stillbirth or death or great bodily harm to the embryo or fetus.

(b) The person's conduct resulted in a miscarriage or stillbirth by that individual or death to the embryo or fetus.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 ;--Am. 2001, Act 1, Eff. June 1, 2001 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90b.amended Conduct proscribed under §§ 750.81 to 750.89 as crime; intent.

Sec. 90b. A person who intentionally commits conduct proscribed under sections 81 to 89 against a pregnant individual is guilty of a crime as follows: (a) If the conduct results in a miscarriage or stillbirth by that individual, or death to the embryo or fetus, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$7,500.00, or both.

(b) If the conduct results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(c) If the conduct results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(d) If the conduct results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 ;--Am. 2001, Act 1, Eff. June 1, 2001 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90c.amended Gross negligence against pregnant individual as crime.

Sec. 90c. A person who commits a grossly negligent act against a pregnant individual is guilty of a crime as follows: (a) If the act results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$7,500.00, or both.

(b) If the act results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both.

(c) If the act results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500.00, or both.

(d) If the act results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 ;--Am. 2001, Act 1, Eff. June 1, 2001 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90d.amended Conduct proscribed under § 257.625(1) or (3) involving accident with pregnant individual as felony; penalties.

Sec. 90d. A person who engages in conduct proscribed under section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, that involves an accident with a pregnant individual is guilty of a felony punishable as follows: (a) If the person's conduct causes a miscarriage or stillbirth by that individual or death to the embryo or fetus, imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(b) If the person's conduct causes great bodily harm or serious or aggravated injury to the embryo or fetus, imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 ;--Am. 2001, Act 1, Eff. June 1, 2001 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90e.amended Conduct as proximate cause of accident involving pregnant individual as misdemeanor; penalty.

Sec. 90e. If a person operates a motor vehicle in a careless or reckless manner, but not willfully or wantonly, that is the proximate cause of an accident involving a pregnant individual and the accident results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 ;--Am. 2001, Act 1, Eff. June 1, 2001 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.90f Applicability of §§ 257.90 to 257.90e; “physician or other licensed medical professional ” defined.

Sec. 90f. (1) Sections 90a to 90e do not apply to any of the following: (a) An act committed by the pregnant individual.

(b) A medical procedure performed by a physician or other licensed medical professional within the scope of his or her practice and with the pregnant individual's consent or the consent of an individual who may lawfully provide consent on her behalf or without consent as necessitated by a medical emergency.

(c) The lawful dispensation, administration, or prescription of medication.

(2) This section does not prohibit a prosecution under any other applicable law.

(3) As used in this section, “physician or other licensed medical professional” means a person licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

History: Add. 1998, Act 238, Eff. Jan. 1, 1999 .

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.90g “Infant protection act” as short title of section; legislative findings; prohibited acts; violation as felony; penalty; exceptions; definitions.**

Sec. 90g. (1) This section shall be known and may be cited as the “infant protection act”.

(2) The legislature finds all of the following: (a) That the constitution and laws of this nation and this state hold that a live infant completely expelled from his or her mother's body is recognized as a person with constitutional and legal rights and protection.

(b) That a live infant partially outside his or her mother is neither a fetus nor potential life, but is a person.

(c) That the United States supreme court decisions defining a right to terminate pregnancy do not extend to the killing of a live infant that has begun to emerge from his or her mother's body.

(d) That the state has a compelling interest in protecting the life of a live infant by determining that a live infant is a person deserving of legal protection at any point after any part of the live infant exists outside of the mother's body.

(3) Except as provided in subsections (4) and (5), a person who intentionally performs a procedure or takes any action upon a live infant with the intent to cause the death of the live infant is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.

(4) It is not a violation of subsection (3) if a physician takes measures at any point after a live infant is partially outside of the mother's body, that in the physician's reasonable medical judgment are necessary to save the life of the mother and if every reasonable precaution is also taken to save the live infant's life.

(5) Subsection (3) does not apply to an action taken by the mother. However, this subsection does not exempt the mother from any other provision of law.

(6) As used in this section: (a) “Live infant” means a human fetus at any point after any part of the fetus is known to exist outside of the mother's body and has 1 or more of the following: (i) A detectable heartbeat.

(ii) Evidence of spontaneous movement.

(iii) Evidence of breathing.

(b) “Outside of the mother's body” means beyond the outer abdominal wall or beyond the plane of the vaginal introitus.

(c) “Part of the fetus” means any portion of the body of a human fetus that has not been

severed from the fetus, but not including the umbilical cord or placenta.

(d) “Physician” means an individual licensed to engage in the practice of allopathic medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

History: Add. 1999, Act 107, Eff. Mar. 10, 2000 .

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.136b Definitions; child abuse.**

Sec. 136b. (1) As used in this section: (a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(c) "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.

(d) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) "Physical harm" means any injury to a child's physical condition.

(f) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years.

(3) A person is guilty of child abuse in the second degree if any of the following apply: (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment for not more than 4 years.

(5) A person is guilty of child abuse in the third degree if the person knowingly or intentionally causes physical harm to a child. Child abuse in the third degree is a

misdemeanor punishable by imprisonment for not more than 2 years.

(6) A person is guilty of child abuse in the fourth degree if the person's omission or reckless act causes physical harm to a child. Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(7) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

History: Add. 1988, Act 251, Eff. Sept. 1, 1988 ;--Am. 1999, Act 273, Eff. Apr. 3, 2000 .

Compiler's Note: Section 4 of Act 251 of 1988 provides: "All proceedings pending and liabilities existing at the time this amendatory act takes effect are saved and may be prosecuted according to the law in force when they are commenced pursuant to section 4a of chapter 1 of the Revised Statutes of 1846, being section 8.4a of the Michigan Compiled Laws."

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.350a Taking or retaining child by adoptive or natural parent; intent; violation as felony; penalty; restitution for financial expense; effect of pleading or being found guilty; probation; discharge and dismissal; nonpublic record; defense. [M.S.A. 28.582(1)]**

Sec. 350a. (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights pursuant to a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

(2) A parent who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day, or a fine of not more than \$2,000.00, or both.

(3) A parent who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the other parent, legal guardian, the person or persons who have adopted the child, or any other person having lawful charge of the child for any financial expense incurred as a result of attempting to locate and having the child returned.

(4) When a parent who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused parent, may defer further proceedings and place the accused parent on probation with lawful terms and conditions. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge from probation and dismiss the proceedings against the parent. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this subsection.

(5) It is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

History: Add. 1983, Act 138, Eff. Dec. 1, 1983;--Am. 1984, Act 75, Imd. Eff. Apr. 18, 1984;--Am. 1986, Act 193, Eff. Mar. 31, 1987 ;--Am. 1996, Act 14, Eff. June 1, 1996 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.142 Furnishing obscene publications or criminal news to minors. [M.S.A. 28.337]

Sec. 142. A person who sells, gives away or in any way furnishes to a person under the age of 18 years a book, pamphlet, or other printed paper or other thing, containing obscene language, or obscene prints, pictures, figures or descriptions tending to corrupt the morals of youth, or any newspapers, pamphlets or other printed paper devoted to the publication of criminal news, police reports, or criminal deeds, and a person who shall in any manner hire, use or employ a person under the age of 18 years to sell, give away, or in any manner distribute such books, pamphlets or printed papers, and any person having the care, custody or control of a person under the age of 18 years, who permits him or her to engage in any such employment, shall be guilty of a misdemeanor.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;--CL 1948, 750.142 ;--Am. 1972, Act 14, Imd. Eff. Feb. 19, 1972 .

Former Law: See section 5 of Act 260 of 1881, being How., § 2002; CL 1897, § 5557; CL 1915, § 7226; and CL 1929, § 12802.

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931**

750.145c Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.

Sec. 145c.

(1) As used in this section:

(a) “Appears to include a child” means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(i) It was created using a depiction of any part of an actual person under the age of 18.

(ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) “Child” means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) “Commercial film or photographic print processor” means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) “Contemporary community standards” means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(e) “Erotic fondling” means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(f) “Erotic nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any

person. As used in this subdivision, “lascivious” means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(g) “Listed sexual act” means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(h) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(i) “Passive sexual involvement” means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(j) “Prurient interest” means a shameful or morbid interest in nudity, sex, or excretion.

(k) “Child sexually abusive activity” means a child engaging in a listed sexual act.

(l) “Child sexually abusive material” means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(m) “Sadomasochistic abuse” means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(n) “Sexual excitement” means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(o) “Sexual intercourse” means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually

abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, or to a commercial film or photographic print processor acting pursuant to subsection (8).

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to the local prosecuting attorney his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to the prosecuting attorney; or keeps the film, photograph, movie film, videotape, negative, or slide according to the prosecuting attorney's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(10) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

History: Add. 1977, Act 301, Eff. Mar. 30, 1978 ;--Am. 1988, Act 110, Eff. June 1, 1988 ;--Am. 1994, Act 444, Eff. Apr. 1, 1995 ;--Am. 2002, Act 629, Eff. Mar. 31, 2003 .

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.145d Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions.**

Sec. 145d. (1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following: (a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows: (a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served

consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(9) As used in this section: (a) “Computer” means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) “Computer network” means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) “Computer program” means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) “Computer system” means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) “Device” includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) “Internet” means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(g) “Minor” means an individual who is less than 18 years of age.

History: Add. 1999, Act 32, Eff. Aug. 1, 1999 ;--Am. 1999, Act 235, Eff. Mar. 10, 2000 ;--Am. 2000, Act 185, Eff. Sept. 18, 2000 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.110a Definitions; home invasion; first degree; second degree; third degree; penalties.

Sec. 110a. (1) As used in this section: (a) “Dwelling” means a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter.

(b) “Dangerous weapon” means 1 or more of the following: (i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(c) “Without permission” means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists: (a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

(3) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

(4) A person is guilty of home invasion in the third degree if the person does either of the following: (a) Breaks and enters a dwelling with intent to commit a misdemeanor in the dwelling, enters a dwelling without permission with intent to commit a misdemeanor in the dwelling, or breaks and enters a dwelling or enters a dwelling without permission and, at any

time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor.

(b) Breaks and enters a dwelling or enters a dwelling without permission and, at any time while the person is entering, present in, or exiting the dwelling, violates any of the following ordered to protect a named person or persons: (i) A probation term or condition.

(ii) A parole term or condition.

(iii) A personal protection order term or condition.

(iv) A bond or bail condition or any condition of pretrial release.

(5) Home invasion in the first degree is a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$5,000.00, or both.

(6) Home invasion in the second degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$3,000.00, or both.

(7) Home invasion in the third degree is a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,000.00, or both.

(8) The court may order a term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

(9) Imposition of a penalty under this section does not bar imposition of a penalty under any other applicable law.

History: Add. 1994, Act 270, Eff. Oct. 1, 1994 ;--Am. 1999, Act 44, Eff. Oct. 1, 1999 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.411h Stalking; definitions; violation as misdemeanor; penalties; probation; conditions; evidence of continued conduct as rebuttable presumption; additional penalties.

Sec. 411h. (1) As used in this section: (a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(d) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following: (i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(f) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of a crime as follows: (a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1

year or a fine of not more than \$1,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following: (a) Refrain from stalking any individual during the term of probation.

(b) Refrain from having any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

History: Add. 1992, Act 260, Eff. Jan. 1, 1993 ;--Am. 1997, Act 65, Eff. Mar. 31, 1998 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.411i Definitions; aggravated stalking; circumstances; violation as felony; penalty; probation; additional conditions of probation; effect of continued course of conduct; rebuttable presumption; additional penalty.

Sec. 411i. (1) As used in this section: (a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Credible threat" means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.

(c) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(d) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(e) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(f) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following: (i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(g) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances: (a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

(b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.

(3) Aggravated stalking is a felony punishable as follows: (a) Except as provided in subdivision (b), by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(4) The court may place an individual convicted of violating this section on probation for any term of years, but not less than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following: (a) Refrain from stalking any individual during the term of probation.

(b) Refrain from any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(5) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

History: Add. 1992, Act 261, Eff. Jan. 1, 1993 ;--Am. 1997, Act 65, Eff. Mar. 31, 1998 .

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.411s added Posting message through electronic medium; prohibitions; penalty; exceptions; definitions.**

Sec. 411s. (1) A person shall not post a message through the use of any medium of communication, including the internet or a computer, computer program, computer system, or computer network, or other electronic medium of communication, without the victim's consent, if all of the following apply: (a) The person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim.

(b) Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(c) Conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(d) Conduct arising from posting the message causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(2) A person who violates subsection (1) is guilty of a crime as follows: (a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both: (i) Posting the message is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.

(ii) Posting the message is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(iii) Posting the message results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.

(iv) The person has been previously convicted of violating this section or section 145d, 411h, or 411i, or section 6 of 1979 PA 53, MCL 752.796, or a substantially similar law of another state, a political subdivision of another state, or of the United States.

(v) The victim is less than 18 years of age when the violation is committed and the person committing the violation is 5 or more years older than the victim.

- (3) This section does not apply to an internet or computer network service provider who in good faith, and without knowledge of the specific nature of the message posted, provides the medium for disseminating information or communication between persons.
- (4) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for the expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.
- (5) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.
- (6) This section does not prohibit constitutionally protected speech or activity.
- (7) A person may be prosecuted in this state for violating or attempting to violate this section only if 1 of the following applies: (a) The person posts the message while in this state.
- (b) Conduct arising from posting the message occurs in this state.
- (c) The victim is present in this state at the time the offense or any element of the offense occurs.
- (d) The person posting the message knows that the victim resides in this state.
- (8) As used in this section: (a) “Computer” means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.
- (b) “Computer network” means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.
- (c) “Computer program” means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.
- (d) “Computer system” means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.
- (e) “Credible threat” means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.
- (f) “Device” includes, but is not limited to, an electronic, magnetic, electrochemical,

biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(h) “Internet” means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(i) “Post a message” means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate, or otherwise communicate information, whether truthful or untruthful, about the victim.

(j) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following: (i) Following or appearing within sight of the victim.

(ii) Approaching or confronting the victim in a public place or on private property.

(iii) Appearing at the victim's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by the victim.

(v) Contacting the victim by telephone.

(vi) Sending mail or electronic communications to the victim through the use of any medium, including the internet or a computer, computer program, computer system, or computer network.

(vii) Placing an object on, or delivering or having delivered an object to, property owned, leased, or occupied by the victim.

(k) “Victim” means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

History: Add. 2000, Act 475, Eff. Apr. 1, 2001 .

**FRAUDULENT ACCESS TO COMPUTERS, COMPUTER SYSTEMS, AND
COMPUTER NETWORKS (EXCERPT)**
Act 53 of 1979

752.796 Use of computer program, computer, computer system, or computer network to commit crime.

Sec. 6. (1) A person shall not use a computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.

(2) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(3) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

History: 1979, Act 53, Eff. Mar. 27, 1980 ;--Am. 1996, Act 326, Eff. Apr. 1, 1997 ;--Am. 2000, Act 179, Eff. Sept. 18, 2000 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.520a Definitions.

Sec. 520a.

As used in this chapter:

- (a) “Actor” means a person accused of criminal sexual conduct.
- (b) “Developmental disability” means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) “Intimate parts” includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (d) “Mental health professional” means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) “Mental illness” means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (f) “Mentally disabled” means that a person has a mental illness, is mentally retarded, or has a developmental disability.
- (g) “Mentally incapable” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (h) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (i) “Mentally retarded” means significantly subaverage general intellectual functioning

which originates during the developmental period and is associated with impairment in adaptive behavior.

(j) “Nonpublic school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(k) “Physically helpless” means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(l) “Personal injury” means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(m) “Public school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(n) “Sexual contact” includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(o) “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(p) “Victim” means the person alleging to have been subjected to criminal sexual conduct.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 2000, Act 505, Eff. Mar. 28, 2001 ;--Am. 2002, Act 714, Eff. Apr. 1, 2003 .

Constitutionality: The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. *People v. Petrella*, 424 Mich. 221, 380 N.W.2d 11 (1985).

Compiler's Note: Section 2 of Act 266 of 1974 provides: “Saving clause. “All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.520b Criminal sexual conduct in the first degree; felony.

Sec. 520b.

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (f)(i) to (v).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 2002, Act 714, Eff. Apr. 1, 2003 .

Constitutionality: The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. *People v. Petrella*, 424 Mich. 221, 380 N.W.2d 11 (1985).

Compiler's Note: Section 2 of Act 266 of 1974 provides: “Saving clause. “All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.520c Criminal sexual conduct in the second degree; felony.

Sec. 520c.

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in sections 520b(1)(f)(i) to (v).

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f)(i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 2000, Act 227, Eff. Oct. 1, 2000 ;--Am. 2002, Act 714, Eff. Apr. 1, 2003 .

Compiler's Note: Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

THE MICHIGAN PENAL CODE (EXCERPT)**Act 328 of 1931****750.520d Criminal sexual conduct in the third degree; felony.**

Sec. 520d.

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that public or nonpublic school. This subdivision does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 1996, Act 155, Eff. June 1, 1996 ;--Am. 2002, Act 714, Eff. Apr. 1, 2003 .

Compiler's Note: Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.520e Criminal sexual conduct in the fourth degree; misdemeanor.

Sec. 520e.

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally

incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that public or nonpublic school. This subdivision does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 1988, Act 86, Eff. June 1, 1988 ;--Am. 1994, Act 213, Eff. Oct. 1, 1994 ;--Am. 1996, Act 155, Eff. June 1, 1996 ;--Am. 2000, Act 227, Eff. Oct. 1, 2000 ;--Am. 2000, Act 505, Eff. Mar. 28, 2001 ;--Am. 2002, Act 714, Eff. Apr. 1, 2003 .

Compiler's Note: Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.483a Prohibited acts; penalties; “retaliate,” “official proceeding,” and “threaten or intimidate” defined.

Sec. 483a. (1) A person shall not do any of the following: (a) Withhold or refuse to produce any testimony, information, document, or thing after the court has ordered it to be produced following a hearing.

(b) Prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime committed or attempted by another person.

(c) Retaliate or attempt to retaliate against another person for having reported or attempted to report a crime committed or attempted by another person. As used in this subsection, “retaliate” means to do any of the following: (i) Commit or attempt to commit a crime against any person.

(ii) Threaten to kill or injure any person or threaten to cause property damage.

(2) A person who violates subsection (1) is guilty of a crime as follows: (a) Except as provided in subdivision (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the violation involves committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(3) A person shall not do any of the following: (a) Give, offer to give, or promise anything of value to any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.

(b) Threaten or intimidate any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.

(4) A person who violates subsection (3) is guilty of a crime as follows: (a) Except as provided in subdivision (b), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the violation involves committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(5) A person shall not do any of the following: (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.

(b) Offer evidence at an official proceeding that he or she recklessly disregards as false.

(6) A person who violates subsection (5) is guilty of a crime as follows: (a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(b) If the violation is committed in a criminal case for which the maximum term of imprisonment for the violation is more than 10 years, or the violation is punishable by imprisonment for life or any term of years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(7) It is an affirmative defense under subsection (3), for which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully.

(8) Subsections (1)(a), (3)(b), and (5)(b) do not apply to any of the following: (a) The lawful conduct of an attorney in the performance of his or her duties, such as advising a client.

(b) The lawful conduct or communications of a person as permitted by statute or other lawful privilege.

(9) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section.

(10) The court may order a term of imprisonment imposed for a violation of this section to be served consecutively to a term of imprisonment imposed for any other crime including any other violation of law arising out of the same transaction as the violation of this section.

(11) As used in this section: (a) "Official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.

(b) "Threaten or intimidate" does not mean a communication regarding the otherwise lawful access to courts or other branches of government, such as the lawful filing of any civil action or police report of which the purpose is not to harass the other person in violation of section 2907 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2907.

History: Add. 2000, Act 451, Eff. Mar. 28, 2001.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.122 Prohibited acts; witnesses; threat or intimidation; affirmative defense; violation as felony; penalties; applicability of section; definitions.

Sec. 122. (1) A person shall not give, offer to give, or promise anything of value to an individual for any of the following purposes: (a) To discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.

(b) To influence any individual's testimony at a present or future official proceeding.

(c) To encourage any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding.

(2) Subsection (1) does not apply to the reimbursement or payment of reasonable costs for any witness to provide a statement to testify truthfully or provide truthful information in an official proceeding as provided for under section 16 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.66, or section 2164 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2164, or court rule.

(3) A person shall not do any of the following by threat or intimidation: (a) Discourage or attempt to discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.

(b) Influence or attempt to influence testimony at a present or future official proceeding.

(c) Encourage or attempt to encourage any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding.

(4) It is an affirmative defense under subsections (1) and (3), for which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify or provide evidence truthfully.

(5) Subsections (1) and (3) do not apply to any of the following: (a) The lawful conduct of an attorney in the performance of his or her duties, such as advising a client.

(b) The lawful conduct or communications of a person as permitted by statute or other lawful privilege.

(6) A person shall not willfully impede, interfere with, prevent, or obstruct or attempt to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for a present or future official proceeding.

(7) A person who violates this section is guilty of a crime as follows: (a) Except as provided in subdivisions (b) and (c), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(b) If the violation is committed in a criminal case for which the maximum term of imprisonment for the violation is more than 10 years, or the violation is punishable by imprisonment for life or any term of years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(c) If the violation involves committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the person is guilty of a felony punishable by

imprisonment for not more than 15 years or a fine of not more than \$25,000.00, or both.

(8) A person who retaliates, attempts to retaliate, or threatens to retaliate against another person for having been a witness in an official proceeding is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both. As used in this subsection, “retaliate” means to do any of the following: (a) Commit or attempt to commit a crime against any person.

(b) Threaten to kill or injure any person or threaten to cause property damage.

(9) This section applies regardless of whether an official proceeding actually takes place or is pending or whether the individual has been subpoenaed or otherwise ordered to appear at the official proceeding if the person knows or has reason to know the other person could be a witness at any official proceeding.

(10) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section.

(11) The court may order a term of imprisonment imposed for violating this section to be served consecutively to a term of imprisonment imposed for the commission of any other crime including any other violation of law arising out of the same transaction as the violation of this section.

(12) As used in this section: (a) “Official proceeding” means a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.

(b) “Threaten or intimidate” does not mean a communication regarding the otherwise lawful access to courts or other branches of government, such as the otherwise lawful filing of any civil action or police report of which the purpose is not to harass the other person in violation of section 2907 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2907.

History: Add. 2000, Act 452, Eff. Mar. 28, 2001.

Compiler's Note: Former § 750.122, which pertained to conflict of interest and officers of public institutions, was repealed by Act 317 of 1968, Eff. Sept. 1, 1968.

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.50 Definitions; charge or custody of animal; prohibited conduct; forfeiture of animal; violation as misdemeanor or felony; penalty; order to pay costs; order prohibiting owning or possessing animal for certain period of time; violation of subsection (6); revocation of probation; certain conduct not prohibited by section.

Sec. 50. (1) As used in this section and section 50b: (a) "Adequate care" means the provision of sufficient food, water, shelter, sanitary conditions, exercise, and veterinary medical attention in order to maintain an animal in a state of good health.

(b) "Animal" means 1 or more vertebrates other than a human being.

(c) "Animal protection shelter" means a facility operated by a person, humane society, society for the prevention of cruelty to animals, or any other nonprofit organization for the care of homeless animals.

(d) "Animal control shelter" means a facility operated by a county, city, village, or township to impound and care for animals found in streets or otherwise at large contrary to any ordinance of the county, city, village, or township or state law.

(e) "Licensed veterinarian" means a person licensed to practice veterinary medicine under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(f) "Livestock" means that term as defined in the animal industry act of 1987, 1988 PA 466, MCL 287.701 to 287.747.

(g) "Person" means an individual, partnership, limited liability company, corporation, association, governmental entity, or other legal entity.

(h) "Neglect" means to fail to sufficiently and properly care for an animal to the extent that the animal's health is jeopardized.

(i) "Sanitary conditions" means space free from health hazards including excessive animal waste, overcrowding of animals, or other conditions that endanger the animal's health. This definition does not include a condition resulting from a customary and reasonable practice pursuant to farming or animal husbandry.

(j) "Shelter" means adequate protection from the elements and weather conditions suitable for the age, species, and physical condition of the animal so as to maintain the animal in a state of good health. Shelter, for livestock, includes structures or natural features such as trees or topography. Shelter for a dog shall include 1 or more of the following: (i) The residence of the dog's owner or other individual.

(ii) A doghouse that is an enclosed structure with a roof and of appropriate dimensions for the breed and size of the dog. The doghouse shall have dry bedding when the outdoor temperature is or is predicted to drop below freezing.

(iii) A structure, including, but not limited to, a garage, barn, or shed that is sufficiently insulated and ventilated to protect the dog from exposure to extreme temperatures or, if not sufficiently insulated and ventilated, contains a doghouse as provided under subparagraph (ii) that is accessible to the dog.

(k) "State of good health" means freedom from disease and illness, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal is undergoing appropriate treatment.

(l) "Tethering" means the restraint and confinement of a dog by use of a chain, rope, or similar device.

(m) "Water" means potable water that is suitable for the age and species of animal, made regularly available unless otherwise directed by a veterinarian licensed to practice veterinary medicine.

(2) An owner, possessor, or person having the charge or custody of an animal shall not do any of the following: (a) Fail to provide an animal with adequate care.

(b) Cruelly drive, work, or beat an animal, or cause an animal to be cruelly driven, worked, or beaten.

(c) Carry or cause to be carried in or upon a vehicle or otherwise any live animal having the feet or legs tied together, other than an animal being transported for medical care, or a horse whose feet are hobbled to protect the horse during transport or in any other cruel and inhumane manner.

(d) Carry or cause to be carried a live animal in or upon a vehicle or otherwise without providing a secure space, rack, car, crate, or cage, in which livestock may stand, and in which all other animals may stand, turn around, and lie down during transportation, or while awaiting slaughter. As used in this subdivision, for purposes of transportation of sled dogs, "stand" means sufficient vertical distance to allow the animal to stand without its shoulders touching the top of the crate or transportation vehicle.

(e) Abandon an animal or cause an animal to be abandoned, in any place, without making provisions for the animal's adequate care, unless premises are temporarily vacated for the protection of human life during a disaster. An animal that is lost by an owner or custodian while traveling, walking, hiking or hunting shall not be regarded as abandoned under this section when the owner or custodian has made a reasonable effort to locate the animal.

(f) Willfully or negligently allow any animal, including one who is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain.

(g) Tether a dog unless the tether is at least 3 times the length of the dog as measured from the tip of its nose to the base of its tail and is attached to a harness or nonchoke collar designed for tethering.

(3) If an animal is impounded and is being held by an animal control shelter or its designee or an animal protection shelter or its designee or a licensed veterinarian pending the outcome

of a criminal action charging a violation of this section or section 50b, before final disposition of the criminal charge, the prosecuting attorney may file a civil action in the court that has jurisdiction of the criminal action, requesting that the court issue an order forfeiting the animal to the animal control shelter or animal protection shelter or to a licensed veterinarian before final disposition of the criminal charge. The prosecuting attorney shall serve a true copy of the summons and complaint upon the defendant and upon a person with a known ownership interest or known security interest in the animal or a person who has filed a lien with the secretary of state in an animal involved in the pending action. The forfeiture of an animal under this section encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of the crime. Upon the filing of the civil action, the court shall set a hearing on the complaint. The hearing shall be conducted within 14 days of the filing of the civil action, or as soon as practicable. The hearing shall be before a judge without a jury. At the hearing, the prosecuting attorney has the burden of establishing by a preponderance of the evidence that a violation of this section or section 50b occurred. If the court finds that the prosecuting attorney has met this burden, the court shall order immediate forfeiture of the animal to the animal control shelter or animal protection shelter or the licensed veterinarian unless the defendant, within 72 hours of the hearing, submits to the court clerk cash or other form of security in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of initial impoundment to the date of trial. If cash or other security has been submitted, and the trial in the action is continued at a later date, any order of continuance shall require the defendant to submit additional cash or security in an amount determined by the court to be sufficient to repay all additional reasonable costs anticipated to be incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal until the new date of trial. If the defendant submits cash or other security to the court under this subsection the court may enter an order authorizing the use of that money or other security before final disposition of the criminal charges to pay the reasonable costs incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of impoundment to the date of final disposition of the criminal charges. The testimony of a person at a hearing held under this subsection is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this subsection does not waive the person's constitutional right against self-incrimination. An animal seized under this section or section 50b is not subject to any other civil action pending the final judgment of the forfeiture action under this subsection.

(4) A person who violates subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00 or community service for not more than 200 hours, or any combination of these penalties and the cost of prosecution. A person who violates subsection (2) on a second occasion is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00 or community service for not more than 300 hours, or any combination of these penalties and the cost of prosecution. A person who violates subsection (2) on a third or subsequent occasion is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00 or community service for not more than 500 hours, or any

combination of these penalties and the cost of prosecution.

(5) If forfeiture is not ordered pursuant to subsection (3), as a part of the sentence for a violation of subsection (2), the court may order the defendant to pay the costs of the care, housing, and veterinary medical care for the animal, as applicable. If the court does not order a defendant to pay all of the applicable costs listed in this subsection, or orders only partial payment of these costs, the court shall state on the record the reason for that action.

(6) As a part of the sentence for a violation of subsection (2), the court may, as a condition of probation, order the defendant not to own or possess an animal for a period of time not to exceed the period of probation. If a person is convicted of a second or subsequent violation of subsection (2), a court order under this subsection may order the defendant not to own or possess an animal for any period of time which may include permanent relinquishment of animal ownership.

(7) A person who owns or possesses an animal in violation of an order issued under subsection (6) is subject to revocation of probation if the order is issued as a condition of probation. A person who owns or possesses an animal in violation of an order issued under subsection (6) is also subject to the civil and criminal contempt power of the court, and if found guilty of criminal contempt, may be punished by imprisonment for not more than 90 days, or by a fine of not more than \$500.00, or both.

(8) This section does not prohibit the lawful killing or other use of an animal, including, but not limited to, the following: (a) Fishing.

(b) Hunting, trapping, or wildlife control regulated pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(c) Horse racing.

(d) The operation of a zoological park or aquarium.

(e) Pest or rodent control.

(f) Farming or a generally accepted animal husbandry or farming practice involving livestock.

(g) Activities authorized pursuant to rules promulgated under section 9 of the executive organization act of 1965, 1965 PA 380, MCL 16.109.

(h) Scientific research pursuant to 1969 PA 224, MCL 287.381 to 287.395.

(i) Scientific research pursuant to sections 2226, 2671, 2676, and 7333 of the public health code, 1978 PA 368, MCL 333.2226, 333.2671, 333.2676, and 333.7333.

History: 1931, Act 328, Eff. Sept. 18, 1931;--CL 1948, 750.50 ;--Am. 1988, Act 204, Imd. Eff. June 29, 1988;--Am. 1994, Act 334, Eff. Apr. 1, 1995 ;--Am. 1996, Act 458, Eff. Mar. 31, 1997 ;--Am. 1998, Act 405, Imd. Eff. Dec. 21, 1998.

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.52 Duty of public officers. [M.S.A. 28.247]

Sec. 52. Duty of public officers—It shall also be the duty of all sheriffs, deputy sheriffs, constables, policemen and public officers, to arrest and prosecute all persons of whose violation of the provisions of the preceding sections of this chapter they may have knowledge or reasonable notice, and for each neglect of such duty, the officer so offending shall be deemed guilty of a misdemeanor.

History: 1931, Act 328, Eff. Sept. 18, 1931;--CL 1948, 750.52 .

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.540 Cutting, breaking, tapping, connecting line, wire or cable. [M.S.A. 28.808]

Sec. 540. Cutting, tapping, using, etc., telephone or telegraph wires, etc.—Any person who shall wilfully and maliciously cut, break, tap or make any connection with, or read, or copy, by the use of telegraph or telephone instruments, or otherwise, in any unauthorized manner, any message, either social or business, sporting, commercial or other news reports, from any telegraph or telephone line, wire or cable so unlawfully cut or tapped in this state; or make unauthorized use of the same, or who shall wilfully and maliciously prevent, obstruct or delay by any means or contrivance whatsoever the sending, conveyance or delivery, in this state, of any authorized communication, sporting, commercial or other news reports, by or through any telegraph or telephone line, cable or wire under the control of any telegraph or telephone company doing business in this state, or who shall wilfully and maliciously aid, agree with, employ, or conspire with any other person or persons to do any of the aforementioned unlawful acts, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years, or by a fine of not more than 1,000 dollars.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;--CL 1948, 750.540 .

Former Law: See section 1 of Act 113 of 1893, being CL 1897, § 11637; CL 1915, § 15403; and CL 1929, § 17046.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

764.1a Complaint; allegations; swearing before magistrate or clerk; finding of reasonable cause; testimony; supplemental affidavits; basis of factual obligations; complaint alleging violation of §§ 750.81 and 750.81a or corresponding ordinance; compliance with § 764.1. [M.S.A. 28.860(1)]

Sec. 1a. (1) A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

(2) The finding of reasonable cause by the magistrate may be based upon 1 or more of the following: (a) Factual allegations of the complainant contained in the complaint.

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

(d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.

(3) The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both.

(4) The magistrate shall not refuse to accept a complaint alleging a violation of section 81 or 81a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 and 750.81a of the Michigan Compiled Laws, or a violation of a local ordinance substantially corresponding to section 81 of Act No. 328 of the Public Acts of 1931 by the spouse of the victim, a former spouse of the victim, an individual with whom the victim has had a child in common, or an individual residing or having resided in the same household as the victim on grounds that the complaint is signed upon information and belief by an individual other than the victim.

(5) A warrant may be issued under this section only upon compliance with the requirements of section 1 of this chapter.

History: Add. 1980, Act 506, Imd. Eff. Jan. 22, 1981;--Am. 1994, Act 70, Eff. July 1, 1994 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.15 Arrest by officer without warrant; situations; circumstances.

- Sec. 15. (1) A peace officer, without a warrant, may arrest a person in any of the following situations: (a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.
- (b) The person has committed a felony although not in the peace officer's presence.
- (c) A felony in fact has been committed and the peace officer has reasonable cause to believe the person committed it.
- (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.
- (e) The peace officer has received positive information by written, telegraphic, teletypic, telephonic, radio, electronic, or other authoritative source that another peace officer or a court holds a warrant for the person's arrest.
- (f) The peace officer has received positive information broadcast from a recognized police or other governmental radio station, or teletype, that affords the peace officer reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.
- (g) The peace officer has reasonable cause to believe the person is an escaped convict, has violated a condition of parole from a prison, has violated a condition of a pardon granted by the executive, or has violated 1 or more conditions of a conditional release order or probation order imposed by a court of this state, another state, Indian tribe, or United States territory.
- (h) The peace officer has reasonable cause to believe the person was, at the time of an accident in this state, the operator of a vehicle involved in the accident and was operating the vehicle in violation of section 625(1), (3), (6), or (7) or section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m, or a local ordinance substantially corresponding to section 625(1), (3), (6), or (7) or section 625m of that act.
- (i) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 625(1), (3), (6), or (7) or section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m, or a local ordinance substantially corresponding to section 625(1), (3), (6), or (7) or section 625m of that act.
- (j) The peace officer has reasonable cause to believe the person was, at the time of an accident, the operator of a snowmobile involved in the accident and was operating the snowmobile in violation of section 82127(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127, or a local ordinance substantially corresponding to section 82127(1) or (3) of that act.
- (k) The peace officer has reasonable cause to believe the person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the ORV in violation of section 81134(1) or (2) or 81135 of the natural resources and environmental

protection act, 1994 PA 451, MCL 324.81134 and 324.81135, or a local ordinance substantially corresponding to section 81134(1) or (2) or 81135 of that act.

(l) The peace officer has reasonable cause to believe the person was, at the time of an accident, the operator of a vessel involved in the accident and was operating the vessel in violation of section 80176(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, or a local ordinance substantially corresponding to section 80176(1) or (3) of that act.

(m) The peace officer has reasonable cause to believe a violation of section 356c or 356d of the Michigan penal code, 1931 PA 328, MCL 750.356c and 750.356d, has taken place or is taking place and reasonable cause to believe the person committed or is committing the violation, regardless of whether the violation was committed in the peace officer's presence.

(n) The peace officer has reasonable cause to believe a misdemeanor has taken place or is taking place on school property and reasonable cause to believe the person committed or is committing the violation, regardless of whether the violation was committed in the peace officer's presence. As used in this subdivision, "school property" means that term as defined in section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(2) An officer in the United States customs service or the immigration and naturalization service, without a warrant, may arrest a person if all of the following circumstances exist:

(a) The officer is on duty.

(b) One or more of the following situations exist: (i) The person commits an assault or an assault and battery punishable under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, on the officer.

(ii) The person commits an assault or an assault and battery punishable under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, on any other person in the officer's presence or commits any felony.

(iii) The officer has reasonable cause to believe a felony has been committed and reasonable cause to believe the person committed it, and the reasonable cause is not founded on a customs search.

(iv) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, electronic, or other authoritative source that a peace officer or a court holds a warrant for the person's arrest.

(c) The officer has received training in the laws of this state equivalent to the training provided for an officer of a local police agency under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

History: 1927, Act 175, Eff. Sept. 5, 1927 ;--CL 1929, 17149 ;--Am. 1935, Act 84, Imd. Eff. May 27, 1935 ;--CL 1948, 764.15 ;--Am. 1978, Act 23, Imd. Eff. Feb. 21, 1978 ;--Am. 1978, Act 384, Eff. Aug. 1, 1978 ;--Am. 1980, Act 400, Eff. Mar. 31, 1981 ;--Am. 1982, Act 311, Eff. Mar. 30, 1983 ;--Am. 1988, Act 19, Eff. June 1, 1988 ;--Am. 1996, Act 81, Imd. Eff. Feb. 27, 1996 ;--Am. 1996, Act 490, Eff. Apr. 1, 1997 ;--Am. 1999, Act 269, Eff. July 1, 2000 ;--Am. 2000, Act 208, Eff. Aug. 21, 2000 ;--Am. 2001, Act 212, Eff. Apr. 1, 2002 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.15a. Arrest without warrant for assault of individual having child in common, household resident, dating relationship, or spouse or former spouse.

Sec. 15a. A peace officer may arrest an individual for violating section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act regardless of whether the peace officer has a warrant or whether the violation was committed in his or her presence if the peace officer has or receives positive information that another peace officer has reasonable cause to believe both of the following: (a) The violation occurred or is occurring.

(b) The individual has had a child in common with the victim, resides or has resided in the same household as the victim, has or has had a dating relationship with the victim, or is a spouse or former spouse of the victim. As used in this subdivision, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

History: Add. 1978, Act 316, Imd. Eff. July 10, 1978 ;--Am. 1980, Act 471, Eff. Mar. 31, 1981 ;--Am. 1994, Act 66, Eff. July 1, 1994 ;--Am. 1996, Act 138, Imd. Eff. Mar. 21, 1996 ;--Am. 1999, Act 269, Eff. July 1, 2000 ;--Am. 2001, Act 208, Eff. Apr. 1, 2002 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.15b. Arrest without warrant for violation of personal protection order; answering to charge of contempt; hearing; bond; show cause order; jurisdiction to conduct contempt proceedings; prosecution of criminal contempt; prohibited actions by court; definitions.

Sec. 15b. (1) A peace officer, without a warrant, may arrest and take into custody an individual when the peace officer has or receives positive information that another peace officer has reasonable cause to believe all of the following apply: (a) A personal protection order has been issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or is a valid foreign protection order.

(b) The individual named in the personal protection order is violating or has violated the order. An individual is violating or has violated the order if that individual commits 1 or more of the following acts the order specifically restrains or enjoins the individual from committing: (i) Assaulting, attacking, beating, molesting, or wounding a named individual.

(ii) Removing minor children from an individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(iii) Entering onto premises.

(iv) Engaging in conduct prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(v) Threatening to kill or physically injure a named individual.

(vi) Purchasing or possessing a firearm.

(vii) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

(viii) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.

(ix) Any other act or conduct specified by the court in the personal protection order.

(c) If the personal protection order was issued under section 2950 or 2950a, the personal protection order states on its face that a violation of its terms subjects the individual to immediate arrest and either of the following: (i) If the individual restrained or enjoined is 17 years of age or older, to criminal contempt of court and, if found guilty of criminal contempt, to imprisonment for not more than 93 days and to a fine of not more than \$500.00.

(ii) If the individual restrained or enjoined is less than 17 years of age, to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(2) An individual arrested under this section shall be brought before the family division of the circuit court having jurisdiction in the cause within 24 hours after arrest to answer to a charge of contempt for violating the personal protection order, at which time the

court shall do each of the following: (a) Set a time certain for a hearing on the alleged violation of the personal protection order. The hearing shall be held within 72 hours after arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney.

(b) Set a reasonable bond pending a hearing of the alleged violation of the personal protection order.

(c) Notify the prosecuting attorney of the criminal contempt proceeding.

(d) Notify the party who procured the personal protection order and his or her attorney of record, if any, and direct the party to appear at the hearing and give evidence on the charge of contempt.

(3) In circuits in which the circuit court judge may not be present or available within 24 hours after arrest, an individual arrested under this section shall be taken before the district court within 24 hours after arrest, at which time the district court shall set bond and order the defendant to appear before the family division of circuit court in the county for a hearing on the charge. If the district court will not be open within 24 hours after arrest, a judge or district court magistrate shall set bond and order the defendant to appear before the circuit court in the county for a hearing on the charge.

(4) If a criminal contempt proceeding for violation of a personal protection order is not initiated by an arrest under this section but is initiated as a result of a show cause order or other process or proceedings, the court shall do all of the following: (a) Notify the party who procured the personal protection order and his or her attorney of record, if any, and direct the party to appear at the hearing and give evidence on the contempt charge.

(b) Notify the prosecuting attorney of the criminal contempt proceeding.

(5) The family division of circuit court in each county of this state has jurisdiction to conduct contempt proceedings based upon a violation of a personal protection order described in this section issued by the circuit court in any county of this state or upon a violation of a valid foreign protection order. The court of arraignment shall notify the court that issued the personal protection order or foreign protection order that the issuing court may request that the defendant be returned to that court for violating the personal protection order or foreign protection order. If the court that issued the personal protection order or foreign protection order requests that the defendant be returned to that court to stand trial, the county of the requesting court shall bear the cost of transporting the defendant to that county.

(6) The family division of circuit court has jurisdiction to conduct contempt proceedings based upon a violation of a personal protection order issued pursuant to section 2(h) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the family division of circuit court in any county of this state or a valid foreign protection order issued against a respondent who is less than 18 years of age at the time of the alleged violation of the foreign protection order in this state. The family division of circuit court that conducts the preliminary inquiry shall notify the court that issued the personal protection order or foreign protection order that the issuing court may request that the respondent be returned to that county for violating the personal protection order or foreign protection order. If the court that issued the personal protection order or foreign protection order requests that the respondent be returned to that court to stand trial, the county of the requesting court shall bear the cost of transporting the respondent to that county.

(7) The prosecuting attorney shall prosecute a criminal contempt proceeding initiated by the court under subsection (2) or initiated by a show cause order under subsection (4), unless the party who procured the personal protection order retains his or her own attorney for the criminal contempt proceeding or the prosecuting attorney determines that the personal protection order was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation. If the prosecuting attorney prosecutes the criminal contempt proceeding, the court shall grant an adjournment for not less than 14 days or a lesser period requested if the prosecuting attorney moves for adjournment. If the prosecuting attorney prosecutes the criminal contempt proceeding, the court may dismiss the proceeding upon motion of the prosecuting attorney for good cause shown.

(8) A court shall not rescind a personal protection order, dismiss a contempt proceeding based on a personal protection order, or impose any other sanction for a failure to comply with a time limit prescribed in this section.

(9) As used in this section: (a) “Foreign protection order” means that term as defined in section 2950h of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2950h.

(b) “Personal protection order” means a personal protection order issued under section 2950 or 2950a of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and, unless the context indicates otherwise, includes a valid foreign protection order.

(c) “Valid foreign protection order” means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2950i.

History: Add. 1980, Act 471, Eff. Mar. 31, 1981 ;--Am. 1983, Act 230, Imd. Eff. Nov. 28, 1983 ;--Am. 1992, Act 251, Eff. Jan. 1, 1993 ;--Am. 1994, Act 59, Eff. July 1, 1994 ;--Am. 1994, Act 62, Eff. July 1, 1994 ;--Am. 1994, Act 418, Eff. Apr. 1, 1995 ;--Am. 1996, Act 15, Eff. June 1, 1996 ;--Am. 1998, Act 475, Eff. Mar. 1, 1999 ;--Am. 1999, Act 269, Eff. July 1, 2000 ;--Am. 2001, Act 209, Eff. Apr. 1, 2002 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.15e Violation of condition of release; arrest without warrant; duties of peace officer; release on interim bond; priority to certain cases; hearing and revocation procedures.

Sec. 15e. (1) A peace officer, without a warrant, may arrest and take into custody a defendant whom the peace officer has or receives positive information that another peace officer has reasonable cause to believe is violating or has violated a condition of release imposed under section 6b of chapter V or section 2a of 1961 PA 44, MCL 780.582a.

(2) If a peace officer arrests a defendant under subsection (1), the peace officer shall do all of the following: (a) Prepare a complaint of violation of conditional release substantially in the following format:

COMPLAINT OF VIOLATION OF CONDITIONAL RELEASE

I _____ am a peace officer. I have determined by:

(name)

L.E.I.N. and verification with the police agency holding the order

Certified or true copy of order

Other (Describe)

That _____ released _____ subject to the following

(court)

(name of defendant)

conditions:

(state or attach a statement of relevant conditions)

I have reasonable cause to believe that on _____ at _____ the

(date)

(time)

defendant violated those conditions as follows:

(state violations)

(Signature)

(Date)

(b) If the arrest occurred within the judicial district of the court that imposed the conditions of release, both of the following:

(i) Immediately provide 1 copy of the complaint to the defendant, the original and 1 copy of the complaint to that court, and 1 copy of the complaint to the prosecuting attorney for the case in which the conditional release was granted. The law enforcement agency shall retain 1 copy of the complaint.

(ii) Bring the defendant before that court within 1 business day following the defendant's arrest to answer the charge of violating the conditions of release.

(c) If the arrest occurred outside the judicial district of the court that imposed the conditions of release, both of the following:

- (i) Immediately provide 1 copy of the complaint to the defendant, and the original and 1 copy of the complaint to the district court or municipal court in the judicial district in which the violation occurred. The law enforcement agency shall retain 1 copy of the complaint.
 - (ii) Bring the defendant before the district court or municipal court in the judicial district in which the violation occurred within 1 business day following the arrest. The court shall determine conditions of release and promptly transfer the case to the court that released the defendant subject to conditions. The court to which the case is transferred shall notify the prosecuting attorney in writing of the alleged violation.
- (3) If, in the opinion of the arresting police agency or officer in charge of the jail, it is safe to release the defendant before the defendant is brought before the court under subsection (2), the arresting police agency or officer in charge of the jail may release the defendant on interim bond of not more than \$500.00 requiring the defendant to appear at the opening of court the next business day. If the defendant is held for more than 24 hours without being brought before the court under subsection (2), the officer in charge of the jail shall note in the jail records why it was not safe to release the defendant on interim bond under this subsection.
- (4) The court shall give priority to cases brought under this section in which the defendant is in custody or in which the defendant's release would present an unusual risk to the safety of any person.
- (5) The hearing and revocation procedures for cases brought under this section shall be governed by Supreme court rules.

History: Add. 1993, Act 52, Eff. July 1, 1993 ;--Am. 1999, Act 269, Eff. July 1, 2000 .

Selected 92+ Day Misdemeanors

28.7293	Sex Off.- Failure to sign registration	93 days/\$500
750.81	Assault & Battery	93 days
750.81A	Aggravated Assault	1 yr
750.136B5	Child Abuse - 4 th Degree	1 yr
750.145C4	Child Sex. Abuse Mat. - Possession yr/\$10,000	1
750.145N4	Vulnerable Adult Abuse - 4 th Degree	1 yr/\$10,000
750.335	Lewd & Lascivious Conduct	1 yr/\$500
750.335A	Indecent Exposure	1 yr/\$500
750.3565	Larceny <\$200	93 days/\$500
750.356A2A	B&E Veh, steal prop, <\$200	93 days/\$500
750.356D	Retail Fraud - 2 nd degree	1 yr/\$2,000
750.356D4	Retail Fraud - 3 rd degree	93 days/\$500
750.377A1D	MDOPP < \$200	93 days/\$500
750.3805	MDOB < \$200	93 days/\$500
750.3821A	MD-TREE, SHRUB, GRASS, ETC. < \$200	93 days/\$500
750.411H	STALKING	1 YR/\$1000
750.50	ANIMALS - ABANDONING/CRUELTY	93 days/\$1000
750.540E1A	PHONE CALL - THREATEN	6 MONTHS/\$500
750.540E1D	PHONE CALL - OBSCENE	6 MONTHS/\$500
750.540E1E	PHONE CALL- CALLING & HANGING UP	6 MONTHS/\$500
750.741A	ARSON-PERSONAL PROP <\$200	93 days/\$500
750.771A	ARSON-PREP TO BURN <\$200	93 days/\$500
750.812	DOMESTIC VIOLENCE	93 days/\$500

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

764.15c.amended Investigation or intervention in domestic violence dispute; providing victim with notice of rights; report; retention and filing of report; development of standard domestic violence incident report form; definitions.

Sec. 15c. (1) After investigating or intervening in a domestic violence incident, a peace officer shall provide the victim with a copy of the notice in this section. The notice shall be written and shall include all of the following: (a) The name and telephone number of the responding police agency.

(b) The name and badge number of the responding peace officer.

(c) Substantially the following statement:

“You may obtain a copy of the police incident report for your case by contacting this law enforcement agency at the telephone number provided.

The domestic violence shelter program and other resources in your area are (include local information).

Information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from these resources.

Your legal rights include the right to go to court and file a petition requesting a personal protection order to protect you or other members of your household from domestic abuse which could include restraining or enjoining the abuser from doing the following:

(a) Entering onto premises.

(b) Assaulting, attacking, beating, molesting, or wounding you.

(c) Threatening to kill or physically injure you or another person.

(d) Removing minor children from you, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(e) Engaging in stalking behavior.

(f) Purchasing or possessing a firearm.

(g) Interfering with your efforts to remove your children or personal property from premises that are solely owned or leased by the abuser.

(h) Interfering with you at your place of employment or education or engaging in conduct that impairs your employment relationship or your employment or educational environment.

(i) Engaging in any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence.

(j) Having access to information in records concerning any minor child you have with the abuser that would inform the abuser about your address or telephone number, the child's address or telephone number, or your employment address.

Your legal rights also include the right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated a personal protection order and has not been arrested.”.

(2) The peace officer shall prepare a domestic violence report after investigating or intervening in a domestic violence incident. Effective October 1, 2002, a peace officer shall use the standard domestic violence incident report form developed under subsection (4) or a form substantially similar to that standard form to report a domestic

violence incident. The report shall contain, but is not limited to containing, all of the following: (a) The address, date, and time of the incident being investigated.

(b) The victim's name, address, home and work telephone numbers, race, sex, and date of birth.

(c) The suspect's name, address, home and work telephone numbers, race, sex, date of birth, and information describing the suspect and whether an injunction or restraining order covering the suspect exists.

(d) The name, address, home and work telephone numbers, race, sex, and date of birth of any witness, including a child of the victim or suspect, and the relationship of the witness to the suspect or victim.

(e) The following information about the incident being investigated: (i) The name of the person who called the law enforcement agency.

(ii) The relationship of the victim and suspect.

(iii) Whether alcohol or controlled substance use was involved in the incident, and by whom it was used.

(iv) A brief narrative describing the incident and the circumstances that led to it.

(v) Whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used.

(vi) A description of all injuries sustained by the victim and an explanation of how the injuries were sustained.

(vii) If the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician.

(viii) A description of any property damage reported by the victim or evident at the scene.

(f) A description of any previous domestic violence incidents between the victim and the suspect.

(g) The date and time of the report and the name, badge number, and signature of the peace officer completing the report.

(3) The law enforcement agency shall retain the completed domestic violence report in its files. The law enforcement agency shall also file a copy of the completed domestic violence report with the prosecuting attorney within 48 hours after the domestic violence incident is reported to the law enforcement agency.

(4) By June 1, 2002, the department of state police shall develop a standard domestic violence incident report form.

(5) As used in this section: (a) "Dating relationship" means that term as defined in section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(b) "Domestic violence incident" means an incident reported to a law enforcement agency involving allegations of 1 or both of the following: (i) A violation of a personal protection order issued under section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, or a violation of a valid foreign protection order.

(ii) A crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual who resides or has resided in the same household.

(c) “Foreign protection order” means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(d) “Valid foreign protection order” means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

History: Add. 1985, Act 222, Eff. Mar. 31, 1986 ;--Am. 1994, Act 60, Eff. July 1, 1994 ;--Am. 1994, Act 63, Eff. July 1, 1994 ;--Am. 1994, Act 418, Eff. Apr. 1, 1995 ;--Am. 1996, Act 15, Eff. June 1, 1996 ;--Am. 1998, Act 475, Eff. Mar. 1, 1999 ;--Am. 1999, Act 269, Eff. July 1, 2000 ;--Am. 2001, Act 207, Eff. Apr. 1, 2002 ;--Am. 2001, Act 210, Eff. Apr. 1, 2002 .

CRIME VICTIM'S RIGHTS ACT (EXCERPT)
Act 87 of 1985

780.753 Information to be given victim.

Sec. 3. Within 24 hours after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall give to the victim the following information in writing:

- (a) The availability of emergency and medical services, if applicable.
- (b) The availability of victim's compensation benefits and the address of the crime victims compensation board.
- (c) The address and telephone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.
- (d) The following statements:
 - “If you would like to be notified of an arrest in your case or the release of the person arrested, or both, you should call [identify law enforcement agency and telephone number] and inform them.”
 - “If you are not notified of an arrest in your case, you may call this law enforcement agency at [the law enforcement agency's telephone number] for the status of the case.”

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 2000, Act 503, Eff. June 1, 2001 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

764.29 Fingerprints. [M.S.A. 28.887(1)]

Sec. 29. (1) At the time of arraignment of a person on a complaint for a felony or a misdemeanor punishable by imprisonment for more than 92 days, the magistrate shall examine the court file to determine if the person has had fingerprints taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws.

(2) If the person has not had his or her fingerprints taken prior to the time of arraignment for the felony or the misdemeanor punishable by imprisonment for more than 92 days, upon completion of the arraignment, the magistrate shall do either of the following: (a) Order the person to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken.

(b) Order the person committed to the custody of the sheriff for the taking of the person's fingerprints.

History: Add. 1986, Act 232, Eff. June 1, 1987 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)**Act 175 of 1927****765.6b Release subject to protective conditions; contents of order; purchase or possession of firearm; entering or removing order from L.E.I.N.; authority to impose other conditions not limited. [M.S.A. 28.893(2)]**

Sec. 6b. (1) A judge or district court magistrate may release under this section a defendant subject to conditions reasonably necessary for the protection of 1 or more named persons. If a judge or district court magistrate releases under this section a defendant subject to protective conditions, the judge or district court magistrate shall make a finding of the need for protective conditions and inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if the defendant is found in contempt of court.

(2) An order or amended order issued under subsection (1) shall contain all of the following:

(a) A statement of the defendant's full name.

(b) A statement of the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.

(c) A statement of the date the conditions become effective.

(d) A statement of the date on which the order will expire.

(e) A statement of the conditions imposed.

(3) An order or amended order issued under this subsection and subsection (1) may impose a condition that the defendant not purchase or possess a firearm.

(4) The judge or district court magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (1) or subsections (1) and (3) into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, Act No. 163 of the Public Acts of 1974, being sections 28.211 to 28.216 of the Michigan Compiled Laws. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the law enforcement agency to remove the order or amended order from the law enforcement information network.

(5) A law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into the law enforcement information network as provided by Act No. 163 of the Public Acts of 1974, or shall remove the order or amended order from the law enforcement information network upon expiration of the order or as directed by the court under subsection (4).

(6) This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules.

History: Add. 1993, Act 53, Eff. July 1, 1993;--Am. 1994, Act 335, Eff. Apr. 1, 1996 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

769.4a Assault on spouse, former spouse, individual with child in common, dating relationship, or household resident; plea or finding of guilty; deferral of proceedings and order of probation; previous convictions; adjudication of guilt upon violation of probation; mandatory counseling program; costs; circumstances for entering adjudication of guilt; discharge and dismissal; limitation; nonpublic record.

Sec. 4a. (1) When an individual who has not been convicted previously of a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation of a local ordinance substantially corresponding to section 81 of that act, pleads guilty to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or under a local ordinance substantially corresponding to section 81 of that act, or has previously availed himself or herself of this section. If the search of the records reveals an arrest for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes of this section. As used in this subsection, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(3) An order of probation entered under subsection (1) may require the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the program.

(4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist: (a) The accused commits an assaultive crime during the period of probation. As used in this subdivision, "assaultive crime" means 1 or more of the following:

(i) That term as defined in section 9a of chapter X.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90g.

(b) The accused violates an order of the court that he or she receive counseling regarding his or

her violent behavior.

(c) The accused violates an order of the court that he or she have no contact with a named individual.

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(6) There may be only 1 discharge and dismissal under this section with respect to any individual. The department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request pursuant to subsection (1) for the purpose of showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section.

History: Add. 1978, Act 353, Imd. Eff. July 14, 1978 ;--Am. 1980, Act 471, Eff. Mar. 31, 1981 ;--Am. 1994, Act 68, Eff. July 1, 1994 ;--Am. 2001, Act 208, Eff. Apr. 1, 2002 .

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

776.22 Domestic violence calls; development, implementation, and evaluation of written policies and standards by police agencies; definitions.

Sec. 22.

(1) Each police agency in this state shall, by January 1, 1995, develop, adopt, and implement written policies for police officers responding to domestic violence calls. The policies shall reflect that domestic violence is criminal conduct.

(2) Each police agency shall consult with the prosecuting attorney and with an area shelter for victims of domestic violence in the development, implementation, including training, and evaluation of the policies and standards.

(3) The policies shall address, but not be limited to addressing, all of the following:

(a) Procedures for conducting a criminal investigation with specific standards for misdemeanor and felony arrests.

(b) Procedures for making a criminal arrest. The procedures shall emphasize all of the following:

(i) In most circumstances, an officer should arrest and take an individual into custody if the officer has probable cause to believe the individual is committing or has committed domestic violence and his or her actions constitute a crime.

(ii) When the officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, or other individuals who reside together or formerly resided together are committing or have committed crimes against each other, the officer, when determining whether to make an arrest of 1 or both individuals, should consider the intent of this section to protect victims of domestic violence, the degree of injury inflicted on the individuals involved, the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household, and any history of domestic violence between the individuals, if that history can reasonably be ascertained by the officer. In addition, the officer should not arrest an individual if the officer has reasonable cause to believe the individual was acting in lawful self-defense or in lawful defense of another individual.

(iii) A police officer's decision as to whether to arrest an individual should not be based solely on the consent of the victim to any subsequent prosecution or on the relationship of the individuals involved in the incident.

(iv) A police officer's decision not to arrest an individual should not be based solely upon the absence of visible indications of injury or impairment.

(c) Procedures for denial of interim bond, as provided in 1961 PA 44, MCL 780.581 to 780.588.

(d) Procedures for verifying a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(e) Procedures for making an arrest for a violation of a personal protection order.

(f) Procedures for enforcing a valid foreign protection order.

(g) Procedures for providing or arranging for emergency assistance to victims including, but not limited to, medical care, transportation to a shelter, or remaining at the scene of an alleged incident of domestic violence for a reasonable time until, in the reasonable judgment of the

police officer, the likelihood of further imminent violence has been eliminated.

(h) Procedures for informing the victim of community services and legal options that are available pursuant to section 15c of chapter IV of this act.

(i) Procedures for preparing a written report, whether or not an arrest is made.

(j) Training of peace officers, dispatchers, and supervisors.

(k) Discipline for noncompliance with the policy.

(l) Annual evaluations of the policy.

(4) The local policies developed, adopted, and implemented pursuant to this section shall be in writing and shall be available to the public upon request

(5) As used in this section:

(a) “Foreign protection order” means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(b) “Valid foreign protection order” means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

History: Add. 1994, Act 69, Imd. Eff. Apr. 11, 1994 ;--Am. 1994, Act 418, Eff. Apr. 1, 1995 ;--Am. 2001, Act 194, Eff. Apr. 1, 2002 .

RELEASE OF MISDEMEANOR PRISONERS (EXCERPT)
Act 44 of 1961

780.582a.amended Holding period; protective or release conditions.

Sec. 2a. (1) A person shall not be released on an interim bond as provided in section 1 or on his or her own recognizance as provided in section 3a, but shall be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate if either of the following applies: (a) The person is arrested without a warrant under section 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15a, or a local ordinance substantially corresponding to that section.

(b) The person is arrested with a warrant for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act and the person is a spouse or former spouse of the victim of the violation, has or has had a dating relationship with the victim of the violation, has had a child in common with the victim of the violation, or is a person who resides or has resided in the same household as the victim of the violation. As used in this subdivision, "dating relationship" means that term as defined in section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(2) If a judge or district court magistrate sets interim bond under this section, the judge or magistrate shall consider and may impose the condition that the person released shall not have or attempt to have contact of any kind with the victim.

(3) If a judge or district court magistrate releases under this section a person subject to protective conditions, the judge or district court magistrate shall inform the person on the record, either orally or by a writing that is personally delivered to the person, of the specific conditions imposed and that if the person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if he or she is found in contempt of court.

(4) An order or amended order issued under subsection (3) shall contain all of the following: (a) A statement of the person's full name.

(b) A statement of the person's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.

(c) A statement of the date the conditions become effective.

(d) A statement of the date on which the order will expire.

(e) A statement of the conditions imposed, including, but not limited to, the condition prescribed in subsection (3).

(5) The judge or district court magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (3) into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the law enforcement agency to remove the order or amended order from the law enforcement information network.

(6) A law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216, or shall remove the order or amended order from the law enforcement information network upon expiration of the order or as directed by the court under subsection (5).

(7) This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules.

History: Add. 1990, Act 308, Eff. Mar. 28, 1991 ;--Am. 2001, Act 198, Eff. Apr. 1, 2002 .

RELEASE OF MISDEMEANOR PRISONERS (EXCERPT)**Act 44 of 1961**

780.581 Taking person arrested without warrant for misdemeanor or violation of ordinance before magistrate; bond; receipt; holding certain arrested persons in holding cell, holding center, lockup, or county jail; “political subdivision” defined. [M.S.A. 28.872(1)]

Sec. 1. (1) If a person is arrested without a warrant for a misdemeanor or a violation of a city, village, or township ordinance, and the misdemeanor or violation is punishable by imprisonment for not more than 1 year, or by a fine, or both, the officer making the arrest shall take, without unnecessary delay, the person arrested before the most convenient magistrate of the county in which the offense was committed to answer to the complaint.

(2) Except as otherwise provided in section 2a, if a magistrate is not available or immediate trial cannot be had, the person arrested may deposit with the arresting officer or the direct supervisor of the arresting officer or department, or with the sheriff or a deputy in charge of the county jail if the person arrested is lodged in the county jail, an interim bond to guarantee his or her appearance. The bond shall be a sum of money, as determined by the officer who accepts the bond, not to exceed the amount of the maximum possible fine but not less than 20% of the amount of the minimum possible fine that may be imposed for the offense for which the person was arrested. The person shall be given a receipt as provided in section 3.

(3) If, in the opinion of the arresting officer or department, the arrested person is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, is wanted by police authorities to answer to another charge, is unable to establish or demonstrate his or her identity, or it is otherwise unsafe to release him or her, the arrested person shall be held at the place specified in subsection (4) until he or she is in a proper condition to be released, or until the next session of court.

(4) For purposes of subsection (3), if the person is arrested in a political subdivision that has a holding cell, holding center, or lockup, the person shall be held in that holding cell, holding center, or lockup. However, if that holding facility is at capacity then the person may be held in a holding cell, holding center, or lockup willing to accept the prisoner. If the person is arrested in a political subdivision that does not have a holding cell, holding center, or lockup, the person shall be held in a holding cell, holding center, or lockup willing to accept the prisoner or in the county jail. As used in this subsection, “political subdivision” means a city, village, or township.

History: 1961, Act 44, Imd. Eff. May 20, 1961;--Am. 1970, Act 157, Eff. Apr. 1, 1971 ;--Am. 1983, Act 61, Eff. Mar. 29, 1984 ;--Am. 1985, Act 149, Imd. Eff. Nov. 12, 1985;--Am. 1990, Act 308, Eff. Mar. 28, 1991 .

THE HOME RULE CITY ACT (EXCERPT)

Act 279 of 1909

117.4i Permissible charter provisions.

Sec. 4i. Each city may provide in its charter for 1 or more of the following: (a) Laying and collecting rents, tolls, and excises.

(b) Regulating and restricting the locations of oil and gasoline stations.

(c) The establishment of districts or zones within which the use of land and structures, the height, area, size, and location of buildings, the required open spaces for light and ventilation of buildings, and the density of population may be regulated by ordinance. The zoning ordinance provisions applicable to 1 or more districts may differ from those applicable to other districts. If a city is incorporated, or if territory is annexed to a city incorporated under this act, the zoning ordinance provisions applicable to the territory within the newly incorporated city or the annexed territory shall remain in effect for 2 years after the incorporation or annexation unless the legislative body of the city lawfully adopts other zoning ordinance provisions.

(d) The regulation of trades, occupations, and amusements within city boundaries, if the regulations are not inconsistent with state or federal law, and the prohibition of trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city.

(e) The regulation or prohibition of public nudity within city boundaries. As used in this subdivision, "public nudity" means knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following: (i) A woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.

(ii) Material as defined in section 2 of 1984 PA 343, MCL 752.362.

(iii) Sexually explicit visual material as defined in section 3 of 1978 PA 33, MCL 722.673.

(f) Licensing, regulating, restricting, and limiting the number and locations of billboards within the city.

(g) The initiative and referendum on all matters within the scope of the powers of that city and the recall of city officials.

(h) A system of civil service for city employees, including employees of that city's board of health, and employees of any jail operated or maintained by the city. Charter provisions providing for a system of civil service for employees of a local health board are valid and effective.

- (i) A system of compensation for city employees and the dependents of city employees in the case of disability, injury, or death of city employees.
- (j) The enforcement of police, sanitary, and other ordinances that are not in conflict with the general laws.
- (k) The punishment of persons who violate city ordinances other than ordinances described in section 4l. The penalty for a violation of such a city ordinance shall not exceed a fine of \$500.00 or imprisonment for 90 days, or both. However, unless otherwise provided by law, the ordinance may provide that a violation of the ordinance is punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.

History: Add. 1929, Act 126, Eff. Aug. 28, 1929 ;--CL 1929, 2239 ;--Am. 1937, Act 309, Eff. Oct. 29, 1937 ;--Am. 1939, Act 175, Eff. Sept. 29, 1939 ;--Am. 1941, Act 10, Imd. Eff. Mar. 5, 1941 ;--Am. 1941, Act 283, Imd. Eff. June 17, 1941 ;--CL 1948, 117.4i ;--Am. 1957, Act 131, Imd. Eff. May 25, 1957 ;--Am. 1963, Act 166, Eff. Sept. 6, 1963 ;--Am. 1991, Act 175, Eff. Mar. 30, 1992 ;--Am. 1994, Act 17, Eff. May 1, 1994 ;--Am. 1994, Act 313, Imd. Eff. July 21, 1994 ;--Am. 1996, Act 179, Imd. Eff. Apr. 19, 1996 ;--Am. 1999, Act 55, Eff. Oct. 1, 1999 .